

Distribution Center Storage and Inventory Management System Project

RFP 04-005-AT
Contract 257775

April 2004



King County

CONTRACT

THIS CONTRACT, made this _____ Day of _____, 2004, by and between King County, Washington, (hereinafter "County") and _____ with its principle place of business at _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No.: 257775

Contract Title: Distribution Center Storage and Inventory Management System Project

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and Services in a timely manner and that its Proposal includes all of the functions and features required for the goods and Services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and Services in accordance with the Contract's terms, Scope of Work and Proposal documents;

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and Services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price Provided herein for the supply of the goods and Services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence; **[1]** Contract Amendments; **[2]** the Contract Document which includes: Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Scope of Work, Attachments A) Contractor Registration Form, B) Price Proposal, C) Performance and Payment Bond, D) Personnel Inventory Report, E) Affidavit and Certificate of Compliance, F) Domestic Partner Benefits Declaration Form, M) Consultant Disclosure Form, N) 504/ADA Assurance of Compliance, O) Contractor's Insurance Forms, P) Software Maintenance, Q) Source Code Escrow Agreement; and **[3]** RFP Addenda; **[4]** Request for Proposals; **[5]** Best and Final Offer; **[6]** the proposal.

COMPANY NAME: _____

ACCEPTED BY:

KING COUNTY APPROVED BY:

Authorized Signature

Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

Date Accepted: _____

Date Accepted: _____

Approved as to form only:

TABLE OF CONTENTS

CONTRACT.....	1
TABLE OF CONTENTS.....	2
DEFINITION OF WORDS AND TERMS	5
SECTION 1. PROPOSAL PREPARATION	9
1.1 Introduction	9
1.2 Proposal Submission	9
1.3 Proposal Signature	9
1.4 Addenda.....	9
1.5 Interpretation of Proposal and Contract Documents.....	10
1.6 Schedule	10
1.7 Inquiries	11
1.8 Preproposal Conference	11
1.9 Examination of Proposal and Contract Documents	11
1.10 Cost of Proposals.....	11
1.11 Modification or Withdrawal of Proposals Prior to Proposal Due Date	11
1.12 Errors and Administrative Corrections	11
1.13 Compliance with RFP Terms, Attachments and Addenda	12
1.14 Proposal Requirements	12
1.15 Forms Required before Contract Signing	13
1.16 Collusion	13
1.17 Proposal Price and Effective Date	13
1.18 Procedure When Only One Proposal Is Received.....	14
1.19 Protest Procedures	14
1.20 Supported Employment Program.....	15
1.21 Compliance With Section 504 Of The Rehabilitation Act Of 1973	15
1.22 Letter of Intent.....	15
SECTION 2. PROPOSAL EVALUATION AND CONTRACT AWARD	16
2.1 General	16
2.2 Proposal Evaluation	16
2.3 Evaluation of Responsiveness and Responsibility	16
2.4 Evaluation Criteria.....	17
2.5 Proposal Scoring and Priority	18
2.6 Proposal Scoring and Priority	18
2.7 Competitive Range	18
2.8 Negotiations	19
2.9 Contract Award	19
2.10 Insurance Requirements.....	19
2.11 Public Disclosure of Proposals	19
SECTION 3. STANDARD CONTRACTUAL TERMS AND CONDITIONS.....	20
3.1 Administration	20
3.2 Contract Changes	20
3.3 Cost or Price Analysis.....	20
3.4 Termination for Convenience/Default/Non-Appropriation	20
3.5 Force Majeure.....	21
3.6 Washington State Sales Tax.....	22
3.7 Taxes, Licenses, and Certificate Requirements	22
3.8 Assignment	22
3.9 Indemnification and Hold Harmless	22

3.10	Applicable Law and Forum	23
3.11	Conflicts of Interest and Non-Competitive Practices.....	23
3.12	Disputes, Claims and Appeals	24
3.13	Mediation and Arbitration	24
3.14	Retention of Records, Audit Access and Proof of Compliance with Contract	24
3.15	Other Public Agency Orders	25
3.16	Recycled Products Policy	25
3.17	Conflicts of Interest - Current and Former Employees.....	25
3.18	Nondiscrimination And Equal Employment Opportunity	25
3.19	Disadvantaged Business Enterprise (DBE) Participation	26
3.20	Severability	27
3.21	Nonwaiver of Breach.....	27
3.22	Domestic Partner Benefits (Non-Discrimination in Benefits).....	27
SECTION 4.	SPECIFIC CONTRACTUAL TERMS AND CONDITIONS	29
4.1	Execution of the Contract.....	29
4.2	Contract Term	29
4.3	Notices	29
4.4	Payment Procedures	30
4.5	Advance Payment Prohibited.....	31
4.6	Purchase Orders.....	31
4.7	Pricing	31
4.8	Shipping Charges	32
4.9	Cost Mark-Up.....	32
4.10	Direct Costs Related to Additional Work.....	32
4.11	Acceptance Process	32
4.12	Final Acceptance	33
4.13	General Warranty Provisions.....	33
4.14	Intellectual Property Warranties.....	34
4.15	Equipment Warranty and Post Warranty Maintenance.....	35
4.16	Software Warranty and Post-Warranty Maintenance.....	35
4.17	Defective Work.....	35
4.18	Intellectual Property	35
4.19	Independent Status of Contractor	37
4.20	Nondisclosure of Data.....	37
4.21	Non-Disclosure Obligation	38
4.22	Public Disclosure Requests	38
4.23	Board of Ethics Disclosure Requirement	38
4.24	Pricing of Spare Parts	38
4.25	No Prototype Components.....	38
4.26	Industrial and Hazardous Waste.....	39
4.27	Prohibition on Asbestos-Containing Products.....	39
4.28	Patents and Royalties	39
4.29	Design Defects.....	39
4.30	Changed Requirements	39
4.31	Counterparts	40
4.32	Performance and Payment Bond.....	40
4.33	Escrow Agreement.....	40
4.34	Bug Status Reports.....	40
4.35	Enhancements, Upgrades, Replacements and New Versions of Software	40
SECTION 5.	INSURANCE REQUIREMENTS	41
5.1	Evidence and Cancellation of Insurance.....	41
5.2	Insurance Requirements.....	41
SECTION 6.	SCOPE OF WORK	44

6.1	Implementation	44
6.2	Contractor Responsibilities	44
6.3	Work Site Restricted Access.....	44
6.4	Background.....	44
6.5	Purpose.....	46
6.6	System and Software Documentation.....	46
6.7	Training Manuals and Hands On Training	47
6.8	Hardware	47
6.9	Software / Inventory Management System	48
SECTION 7.	PROPOSAL QUESTIONS	52
7.1	General	52
7.2	Contacts.....	52
7.3	References.....	52
7.4	Manufacturer, and Proposer Information	53
7.5	Compliance With Technical Specifications	53

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by the County during the Proposal period and prior to contract award.

Administrative Change: Documentation provided by County to Contractor, which reflects internal King County procedures not affecting the Contract terms or Scope of Work.

Best and Final Offer: Best and Final Offer shall consist of the Proposer's revised Proposal and any supplemental information requested during the evaluation of Proposals. In the event of any conflict or inconsistency in the items submitted by the Proposer, the items submitted last govern.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Project Manager during Contract performance.

Change Documentation: A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as an Amendment.

Competitive Range: The Competitive Range consists of the Proposers that have a reasonable chance of selection for contract award. The Proposal Evaluators (PE) shall conduct the initial evaluation of the proposals considering price and Evaluation Factors established in the RFP. The Buyer and Project Manager/PE together shall compare the evaluations and determine the Competitive Range. The Competitive Range may be reduced after the evaluation of additional information, Best and Final Offers and negotiations.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page i of this document.

Contract Deliverables: The items listed in Section 4.4, C and any other documents delivered pursuant to a Contract Change.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of Services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Criteria, Evaluation Criteria or Evaluation Factors: The elements cited in the RFP that the County shall examine to determine the Proposers understanding of the requirements; technical, business and management approach; key personnel; qualification and experience of the Proposer; potential for successfully accomplishing the Contract; risk allocation and the probable cost to the County.

Day: Calendar Day.

Derivative Work: Any addition, extension, improvement, compilation, abridgement or other form in which an existing work is recast, transformed or adapted.

Enhancement: Technical or functional additions to the Software to improve Software Functionality and/or operations. Enhancements are delivered with new releases of the Software.

Fault: A fault or defect in any equipment or software comprised in the Distribution Center Storage and Inventory Management System which causes it to operate other than in accordance with the Contract requirements.

Final Acceptance: The point when King County acknowledges that the Contractor has preformed the entire Work in accordance with the Contract.

Firmware: Software kept in semi-permanent memory in hardware.

Intellectual Property: Any invention, process, equipment, hardware, firmware, software, documentation, system, improvement, discovery, database, development, document or work product, which qualifies or may qualify for a patent, trademark, copyright, trade secret, or other form of proprietary right under the laws of a state, the United States of America, or any other country.

Intellectual Property Materials (IP Materials): All materials related to software, firmware and hardware, whether relating to Pre-Existing Intellectual Property or Work Product, and consisting of the following:

For software and firmware: the compiled executable code, interface specifications and Software Documentation for each program, module and element of software and firmware provided or used in the Distribution Center Storage and Inventory Management System or any unit of equipment.

For hardware: chip designs/maskworks as applicable, hardware designs, patents, prototypes, and User Documentation.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Pre-Existing Intellectual Property: Any Intellectual Property supplied by the Contractor that is in existence as of the date of execution of the Contract. The County's rights to such Pre-Existing Intellectual Property are as set forth in Section 4.18.B of the Contract.

Previous Sequential Release: A release of Software for use in a particular operating environment that has been replaced by a subsequent release of the Software in the same operating environment. Contractor shall support a Previous Sequential Release. Multiple Previous Sequential Releases may be supported at any given time.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration. This Contract may be part of a larger County project.

Proposal Evaluators (PE): Team of people appointed by the County to evaluate the proposals, conduct discussions, call for Best and Final Offers, score the proposals and make recommendations.

Proposer: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a proposal to perform the Work.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

RFP: Request for Proposals. Also known as the solicitation document.

Reference Documents: Reports, Specifications, and drawings that are available to Proposers for information and reference in preparing proposals but not as part of this Contract.

Scope of Work or Statement of Work (SOW): A section of the Contract consisting of written descriptions of Services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Services: The furnishing of labor, time or effort by a Contractor, including Software Maintenance or Support, custom Software, or consulting but not involving the delivery of any specific manufactured goods.

Software: All or any portion of the then commercially available version(s) of the computer Software programs and Enhancements thereto, including source code, localized versions of the computer Software programs and Enhancements thereto, including source code and Documentation delivered by Contractor to the County.

Software Documentation: Comprises, for each program, module and element of software and firmware included in the Distribution Center Storage and Inventory Management System, the following items:

1. Complete source code including all header files, include files, make files, and macros.
2. Copy (pre-built) of the application executables and libraries produced from the source code.
3. Description of the relationship of the object code modules or “executables” to each other; as well as the relationship of these executables to any third-party programs.
4. Description of the source computer which created the source code; the configurations necessary to compile the code; a copy of the proper compiler and the correct compilation instructions; any source code control system or other encryption or encoding devices which have been applied to the source code; any third party applications and how to access same; the configuration of the environment in which the executables will function, including hardware as well as third party software.
5. Comprehensive installation and configuration documentation and procedures, complete with copies of any automated tools used to perform the installation, detailing the steps required to enable a competent person with appropriate skills to install and run the target application.
6. Licensed copy of, and complete documentation for, the operating system or systems required to host the software.
7. Comprehensive build documentation and instructions reasonably required or necessary to enable a competent independent third party programmer to create, operate, maintain, modify, improve and create Derivative Works from the software without the help of any person, including, but not limited to:
 - a. documentation detailing the steps to build the target executable(s) and library(s) from the source code;
 - b. documentation detailing the pre-requisite configurations of the source code (e.g. directory structures) and compilation tools (e.g. compiler switches, environment variables) necessary to begin the build process.
 - c. documentation identifying the target platform requirements (including limitations and restrictions) that are necessary for the application to fully and properly function as designed (e.g. operating system, environment variables, object library & DLL needs and expected location, third party drivers that must be installed and running, third party libraries, specific hardware resources that are expected by the application, list of alternatives if applicable for any of the required Software or hardware elements)
 - d. scripts, utilities, lists of tools (including compiler names and versions), make tool names and versions, third party libraries, and an archive copy of tools
 - e. technical specifications, software flow charts, logic diagrams, schematics, data dictionary, entity relationship diagrams (to the table and column level with all inter-relations), application data dictionary for code parameters, variables, source code, any working algorithms and the relationship to the module or program, each software module and how it correlates to the main program and its dependencies, all supporting required files, programs, versions, operating system requirements, data files, annotations, schematics, logic flowcharts of modules
8. Programming tools and routines created by the Contractor and not commercially available.
9. Listing of all third party utilities, drivers, libraries, and header files used to compile and link the source code; and copy of all documentation that is generally provided to licensees with the third party utilities, drivers, libraries, and header files to the extent provision of copies is permitted by the third parties.

10. Listing of the application(s) used to build the target executable(s) and library(s) from the source code and documentation of same to the extent its provision is permitted by third party owners.
11. Verification and validation procedures to ensure software build is correct and complete.
12. Complete list of any passwords required by the target software or any third party application where applicable.
13. All other information necessary to compile and use the source code.
14. Security algorithms and security keys.
15. User Documentation including but not limited to user manuals, training manuals, and maintenance manuals.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

System Integration: The installations and operations of all hardware, Software and communications components so that they function as a complete operational environment and in conjunction with each other as specified in the Contract.

Update: Any revision to software and firmware used in the Distribution Center Storage and Inventory Management System that is created or provided by the Contractor and that is required for the continued operation and maintenance of the Distribution Center Storage and Inventory Management System including, but not limited to, error corrections, bug fixes, workarounds, patches, changes in third party software or required to accommodate such changes and any other fixes and changes not constituting an Enhancement. These shall not be considered Contract Changes under the Contract. If not capitalized, the term, "update," shall refer to the same types of revisions, whether or not related to the Distribution Center Storage and Inventory Management System, but as performed by the County or its employees or contractors.

Virus: Software code that is intentionally and specifically constructed for the purpose of destroying, interrupting or otherwise adversely impacting other code or data in a computer, such as replicating itself or another program many times without any useful purpose.

Warranty Period: The period of twelve (12) months following Final Acceptance. For software provided after Final Acceptance, the Warranty Period shall be twelve (12) months following acceptance of the Update or Enhancement. For a unit of equipment provided after Final Acceptance, the Warranty Period shall be twelve (12) months following acceptance of the unit of equipment.

Work: Everything to be provided and done for the fulfillment of the Contract and Shall include all Software, Hardware and Services specified under this Contract, including Contract Changes and settlements. Work includes Work Product.

Work Product: As used in Section 4.18 regarding County's rights to Work Product, Includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, Software Documentation, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.

SECTION 1. PROPOSAL PREPARATION

1.1 Introduction

The King County Department of Transportation seeks proposals for a one time buy turn-key procurement for the replacement of a computer controlled inventory management system in its Metro Transit Information Distribution Center. The Information Distribution Center receives, stores, tracks and distributes a variety of printed materials, including bus timetables, maps, and brochures. Most of these materials are delivered by Information Distribution Center personnel to hundreds of outlets in businesses, schools, transit centers, libraries, government offices and other locations throughout King County. In addition, some low volume outlets are sent materials through the U.S. Postal System. Approximately 86 million items are received, stored and distributed on a yearly basis.

Currently, two White Systems WH-40 horizontal carousels and a custom software application provide storage, warehouse inventory management, access, and order processing. With the current system, when staff distributors are in the field, they communicate with the system via handheld radio devices. The handheld devices hold stocking information for deliveries to outlets and support the creation of restocking orders in the field.

The fully-integrated system resulting from this procurement is expected to feature:

- A. Two additional horizontal carousels (new, or preferably used), compatible with the existing carousels, resulting in a total of four horizontal carousels in the Information Distribution Center.
- B. Replacement of existing custom software with a new Windows based off the shelf PC inventory management package
- C. Replacement of the current field communication system with a wireless personal digital assistant (PDA) based solution.

1.2 Proposal Submission

- A. Proposals shall contain all required attachments and information, be sealed and submitted to the County (hereinafter "County"), Procurement and Contract Services Section, Mailstop EXC-FI-0871, Eighth Floor, Exchange Building, 821 Second Avenue, Seattle, Washington 98104-1598 no later than 2:00 p.m. Seattle time on May 27, 2004.
- B. Proposals shall only be accepted from Contractors able to complete the Contract requirements. Subcontractors and joint Proposers are not allowed to submit stand alone proposals.

Note: This RFP is available on the Web at <http://www.metrokc.gov/finance/procurement> and by choosing the "**RFPs, RFQs, ITBs**" menu tab, then click the "**New**" menu tab, then click on "**goods & Services**", and look for RFP 04-005. Persons who copy the Document from the Internet shall inform Alan Terhune that they have received the document. If they fail to inform Alan Terhune, they shall not be notified of Addenda as issued. All Addenda shall be referenced in the Contractor Registration Form (Attachment A).

1.3 Proposal Signature

Each proposal shall include a completed Contractor Registration Form, Attachment A signed by an authorized representative of the Proposer.

1.4 Addenda

Each '**Contractor Registration Form**', **Attachment A**, shall include **acknowledgment** of receipt and review of **ALL Addenda** issued during the proposal period.

At any time, if the County changes, revises, clarifies, increases, or otherwise modifies the RFP, the County shall issue a written Addendum to the RFP.

In considering which firms to notify by Addendum, the County shall consider the stage in the procurement process at which the change occurs and the magnitude of the change, as follows:

- A. If proposals are not yet due, the Addendum shall be sent to all firms that have received the RFP or acknowledged receipt of the RFP from the web site. (See Subsection 1-2 for location of Addenda on King County Web.)
- B. If the time for receipt of proposals has passed, the Addendum shall be sent only to Proposers with proposals submitted on time to the County.
- C. If the proposals have been evaluated, only those proposals determined to be within the competitive range shall receive an Addendum.
- D. The County reserves the right to extend the proposal submission period or may cancel the original RFP and may issue a new one, regardless of the stage of the procurement process. The new solicitation shall be issued to all firms originally solicited and to any firms added to the Proposers list.

1.5 Interpretation of Proposal and Contract Documents

No oral interpretations as to the meaning of the RFP shall be made to any Proposer. Requests for a written interpretation shall be made in writing and delivered or faxed or e-mailed to the Buyer at the County's Procurement Services Division at the location indicated in Subsection 1-7 at least ten (10) Days before the date established for submitting proposals. Any interpretation deemed necessary by the County shall be in the form of an addendum to the RFP and when issued shall be delivered as promptly as is practicable to all parties to whom the RFP has been issued. All Addenda shall become part of the RFP and any subsequently awarded Contract. Proposers shall not rely upon any oral statements or conversations, whether at the pre-proposal conference, if any, or otherwise, they may have with County employees or third parties regarding the RFP. Any changes to the RFP shall follow the Addenda process in Subsection 1-4.

1.6 Schedule

<u>Day/Month/Year</u>	<u>Event</u>
15 Apr 04	Public announcement of Request for Proposals
27 Apr 04	Pre-Proposal questions due, in writingsubsection 1-8
29 Apr 04	Pre-Proposal conference (time and location)subsection 1-8
06 May 04	Letter of Intent (optional),subsection 1-20
13 May 04	Last questions due, in writing,subsection 1-9
27 May 04	Proposals duesubsection 1-2
24 Jun 04	Evaluation/Negotiation of Proposals begins.Section 2

PROPOSALS NOT WITHIN THE COMPETITIVE RANGE SHALL BE ELIMINATED FROM THE SELECTION PROCESS.

- * 08 Jul 04..... Evaluation/Negotiation complete
- * 09 Aug 04..... Execute Contract and issue Notice to Proceed

*NOTE: Dates preceded by an asterisk are estimated dates. Estimated dates are for information only.

1.7 Inquiries

Inquiries concerning the procurement process shall be directed to Alan Terhune at e-mail address: alan.terhune@metrokc.gov or at phone number (206) 684-1067 or FAX number (206) 684-1470 or in writing to the County's Procurement & Contract Services Section, Eighth floor, Exchange Building, Mailstop EXC-FI-0871, 821 Second Avenue, Seattle, WA 98104-1598.

COMMUNICATIONS CONCERNING THIS PROCUREMENT, WITH OTHER THAN THE LISTED BUYER MAY CAUSE THE PROPOSER TO BE DISQUALIFIED.

1.8 Preproposal Conference

A non-mandatory Preproposal conference shall be held at 9:00 a.m./ on

April 29, 2004 at 1523 6th Avenue South, Seattle, WA 98104. All prospective Proposers are strongly encouraged to attend. The intent of the Preproposal Conference is to assist the Proposers to more fully understand the requirements of this RFP. Proposers are encouraged to submit questions in advance to enable the County to prepare responses; these questions should be E-mailed to the Buyer before the close of business April 27, 2004. Questions will be encouraged during the Preproposal Conference also.

1.9 Examination of Proposal and Contract Documents

- A. The submission of a Proposal shall constitute an acknowledgment upon which the County may rely that the Proposer has thoroughly examined and is familiar with the RFP, including any work site identified in the RFP, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and Services to be Provided hereunder.
- B. The failure or neglect of a Proposer to receive or examine such documents, work sites, statutes, regulations, ordinances or resolutions shall in no way relieve the Proposer from any obligations with respect to its Proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this RFP, work sites, statutes, regulations, ordinances or resolutions.

1.10 Cost of Proposals

The County is not liable for any costs incurred by Proposers in the preparation, presentation, testing or negotiation of Proposals submitted in response to this RFP.

1.11 Modification or Withdrawal of Proposals Prior to Proposal Due Date

At any time before the time and date set for submittal of Proposals, a Proposer may request to withdraw or modify its Proposal. Such a request shall be in writing signed by an authorized representative of Proposer as identified in Attachment A, Contractor Registration Form. All Proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original Proposal.

1.12 Errors and Administrative Corrections

- A. The County shall not be responsible for any errors in Proposals. Proposers shall only be allowed to alter Proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by the County.
- B. The County reserves the rights to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors.

1.13 Compliance with RFP Terms, Attachments and Addenda

- A. the County intends to award a Contract based on the terms, conditions, attachments and addenda contained in this RFP. Proposers are strongly advised to not take any exceptions. Proposers shall submit Proposals, which respond to the requirements of the RFP. An exception is not a response to a Proposal requirement. If an exception is taken, a 'Notice of Exception' shall be submitted with the Proposal. The 'Notice of Exception' shall identify the specific point or points of exception and Provide an alternative.
- B. **Proposers are cautioned that exceptions to the terms, conditions, attachments and addenda may result in rejection of the proposal.** The County reserves the right to reject any proposal for any reason including, but not limited to, the following: any proposal which is incomplete, obscure, irregular or lacking necessary detail and specificity; any proposal which has any qualification, addition, limitation or provision attached to the proposal; any proposal from Proposers who (in the sole judgment of the County) lack the qualifications or responsibility necessary to perform the Work; any proposal which is not approved as being compliant with the requirements for equal employment opportunity; any proposal for which a Proposer fails or neglects to complete and submit any qualifications information within the time specified by the County; and any proposal submitted by a Proposer which is not registered or licensed as may be required by the laws of the state of Washington or local government agencies.
- C. The County may, at its sole discretion, determine that a proposal with a 'Notice of Exception' merits evaluation. A proposal with a 'Notice of Exception' not immediately rejected may be evaluated, but its competitive scoring shall be reduced to reflect the importance of the exception. Evaluation and negotiation shall only continue with the Proposer if the County determines that a Contract in the best interest of the County may be achieved.
- D. In consideration for the County's review and evaluation of its proposal, the Proposer waives and releases any claims against the County arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation and presentation of proposals submitted in response to this RFP.
- E. Proposals shall address all requirements identified in this RFP. In addition, the County may consider proposal alternatives submitted by Proposers that Provide enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in the County's best interests. Proposal alternatives shall be clearly identified.

1.14 Proposal Requirements

- A. The Proposal shall contain the following items and follow the exact sequence outlined below:
 - 1. Proposals shall respond to the RFP questions listed in Section 7.
 - 2. Attachments:
 - [Attachment A](#).....*Contractor Registration Form*
http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/AttachmentA_ContractorRegistrationForm.doc
 - [Attachment B](#)*Price Proposal*
Brochures, booklets or other sales material may be attached to the Proposals (optional).
- B. Submit five (5) copies of the proposal and attachments. One Original [marked ORIGINAL] shall be unbound to facilitate reproduction. In addition Proposers are encouraged to e-mail a zipped copy of the proposal to the Buyer after the proposals have been opened.

1.15 Forms Required before Contract Signing

- A. The following completed forms will be required from the selected contractor, prior to contract award, they are available at <http://www.metrokc.gov/finance/procurement/forms.asp>

[Attachment D](#)Personnel Inventory Report

http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTD_Personnel_Inventory.doc

[Attachment E](#)Affidavit and Certificate of Compliance

http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTE_CertificateOfCompliance.doc

[Attachment F](#)Domestic Partner Benefit Declaration Form

http://www.metrokc.gov/finance/procurement/documents/domesticpartnerdeclaration_form.doc

[Attachment G](#)Performance and Payment Bond

http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/AttachmentG_PerformanceAndPaymentBond.doc

[Attachment M](#)Consultant Disclosure Form

http://www.metrokc.gov/finance/procurement/documents/U_019_Consultant_Disclosure_Form.doc

[Attachment N](#)504/ADA Disability Assurance of Compliance and Corrective Action Plan

http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTN_504_ADA.doc

Attachment OContractor's Certificate of Insurance and Endorsement

[Attachment P](#)Software Maintenance

[Attachment Q](#)Source Code Escrow Agreement

1.16 Collusion

If the County determines that collusion has occurred among Proposers, none of the Proposals from the participants in such collusion shall be considered. The County's determination shall be final.

1.17 Proposal Price and Effective Date

- A. The Proposal price shall include everything necessary for the prosecution and completion of Work under the Contract including but not limited to furnishing all materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and service, except as may be Provided otherwise in this RFP. Proposed Prices shall include all freight charges, FOB to the designated delivery point. Washington State sales/use taxes and Federal excise taxes shall not be included in the Proposal price. The County shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The County is exempt from Federal excise taxes. All other government taxes, duties, fees, royalties, assessments and charges shall be included in the Proposal price.
- B. In the event of a discrepancy between the unit price and the extended amount for a Proposal item, the County reserves the right to clarify the Proposal.
- C. The Proposal shall remain in effect for 200 Days after the Proposal due date or Best and Final due date.

1.18 Procedure When Only One Proposal Is Received

If the County receives a single responsive, responsible and advantageous Proposal, the County shall have the right, in its sole discretion, to extend the Proposal due date to conduct any or all of the following with the Proposer: Price analysis, clarifications, discussions or negotiations. The Proposer shall promptly Provide all pricing data, documentation and explanation requested by the County to assist in such analysis. By conducting such analysis, the County shall not be obligated to accept the single Proposal; the County reserves the right to reject such Proposal or any portion thereof.

1.19 Protest Procedures

- A. Form of Protest: In order to be considered, a Protest shall be in writing, addressed to the Manager of the King County Procurement and Contract Services Section of the Department of Executive Services, and include:
 - 1. The name, address, and phone number of the Proposer protesting, or the authorized representative of the Proposer;
 - 2. The Proposal RFP Number and Title under which the protest is submitted;
 - 3. A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the protesting Proposer to supplement its protest with any subsequently discovered documents prior to the Manager's decision;
 - 4. The specific ruling or relief requested; and
 - 5. Evidence that all Persons with a financial interest in the procurement have been given notice of the protest or if such Persons are unknown, a statement to that effect.
- B. Who May Protest.
 - 1. Protests prior to Proposal due date based on Scope of Work or other terms in the RFP document -- any prospective Proposer.
 - 2. Protests following Proposal due date -- any Proposer submitting a Proposal on time.
- C. Time to Protest. Protests based on Scope of Work or other terms in the RFP document shall be received by the County no later than ten (10) Days prior to the date established for submittal of Proposals. The County shall receive protests based on other circumstances within five (5) Days after the protesting Proposer knows or should have known of the facts and circumstances upon which the Protest is based. In no event shall a Protest be considered if all Proposals are rejected or after award of the Contract.
- D. Determination of Protest. Upon receipt of a timely written Protest, the Procurement Manager shall investigate the Protest and shall respond in writing to the Protest prior to the award of Contract. Except as Provided below, the decision of the Procurement Manager shall be final.
- E. Reconsideration of Manager's Decision. A financially interested Proposer or Contractor may request that a Manager's adverse decision be reviewed by the Director of the King County Business Operations Division ("Director") on a reconsideration basis only. The only justifications for reconsideration are (1) new data, relevant to the underlying grounds for protest and unavailable at the time of the Protest to the Manager; or (2) the Manager made an Error of law or regulation. The following procedures shall be followed for a reconsideration of the Manager's decision:
 - 1. Form of Request for Reconsideration. In order to be considered, a Request for Reconsideration shall be filed with the Director in writing and include:
 - a. Name, address, and telephone number of the Person protesting or their authorized representative;
 - b. A copy of the written decision of the Manager; and

- c. Justification for a reconsideration by the Director, including all pertinent facts and law on which the Proposer is relying.
 2. Time for filing Request for Reconsideration. The financially interested Proposer shall file the Request for Reconsideration no later than five calendar Days of receiving the Procurement Manager's decision.
 3. Review of Manager's Decision. Upon receipt of a Request for Reconsideration, the Director or his/her designee shall review (1) the information submitted to and reviewed by the Manager and (2) the decision of the Manager, and shall thereafter issue a final determination regarding the Request for Reconsideration. No other information shall be reviewed unless the basis for the request for reconsideration is new data.
- F. Failure To Comply: Failure to comply with the procedures set forth herein may render a Protest untimely or inadequate and may result in rejection thereof by the County.

1.20 Supported Employment Program

The County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those Contractors and Consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit Documentation supporting this claim with your Proposal. If you have questions, or need additional information, please contact the Community and Human Services Division, Developmental Disabilities Division, 206-296-5268.

1.21 Compliance With Section 504 Of The Rehabilitation Act Of 1973

For all contracts providing consulting, maintenance, training or other services, the Bidder/Proposer shall complete a Disability Self-Evaluation Questionnaire, Attachment N. The 504/ADA Disability Assurance of Compliance will cover all programs and services offered (including any services not subject to this Contract) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Bidder/Proposer shall complete a 504/ADA Disability Assurance of Compliance within ten days after receiving written notice of selection. The Proposer shall retain a copy of the completed 504/ADA and submit to the Buyer the original final two signed pages titled "504/ADA Disability Assurance of Compliance", which will be attached to the Contract.

1.22 Letter of Intent

A Letter of Intent is due by May 6, 2004 at County's Procurement and Contract Services Section, Eighth floor, Exchange Building, Mailstop EXC-FI-0871, 821 Second Avenue, Seattle, WA 98104-1598 or by email to [mail to alan.terhune@metrokc.gov](mailto:mail_to_alan.terhune@metrokc.gov).

Prospective Proposers are strongly encouraged to submit a Letter of Intent. The letter can be delivered by Mail, Fax or e-mail to the Buyer. The Letter of Intent does not bind the prospective Proposer to submit a Proposal nor does failure to submit a Letter of Intent preclude any prospective proposer from submitting a Proposal.

SECTION 2. PROPOSAL EVALUATION AND CONTRACT AWARD

2.1 General

Proposals shall be evaluated and ranked by the Proposal Evaluators (PEs) on the basis of the criteria established in this RFP. The PEs shall evaluate the Proposals submitted in response to the RFP, conduct fact finding, discussions/negotiations, request Best and Final Offers and determine which proposal is the most advantageous to the County for Contract award. The PEs recommendation is subject to review and approval.

2.2 Proposal Evaluation

- A. The PEs shall evaluate each proposal using the criteria set forth in this RFP. If deemed necessary by the PE, written and/or oral discussions, site visits or any other type of clarification of proposal information may be conducted with those Proposers whose Proposals are found to be potentially acceptable. Identified deficiencies, technical requirements, terms and conditions of the RFP, costs or prices, and suspected mistakes may be included among the items for discussion. The discussions are intended to give Proposers a reasonable opportunity to resolve deficiencies, uncertainties and suspected mistakes as requested by the PE and to make the cost, pricing or technical revisions required by the resulting changes. In addition, the County may request additional business and administrative information.
- B. The PE may find that a Proposer appears fully qualified to perform the Contract or it may require additional information or actions from a Proposer. In the event the PE determines that the proposal is not within the Competitive Range the PE shall eliminate the proposal from further consideration. Upon completion of discussions, the PE may issue to all remaining potentially acceptable Proposers a request for Best and Final Offers. The request shall include notice that discussions are concluded, an invitation to submit a revised proposal with a Best and Final Offer, and a new submittal date and time.
- C. The County reserves the right to make a Contract award without written and/or oral discussions with the Proposers and without an opportunity to submit Best and Final Offers when deemed to be in the County's best interests.

2.3 Evaluation of Responsiveness and Responsibility

Part of the evaluation process involves a determination of Responsiveness and Responsibility. The County may request that the Proposer Provide additional information, explanation and Documentation to be used in the determination. The requests for information can occur at any point in the evaluation process. The additional information shall normally be in the following subject areas:

- A. Responsiveness
The County shall consider all the material submitted by the Proposer to determine whether the Proposer's offering is in compliance with the terms and conditions set forth in this RFP.
- B. Responsibility
 - 1. The County shall consider all the material submitted by the Proposer, and other evidence it may obtain otherwise, to determine whether the Proposer is capable of and has a history of successfully completing contracts of this type. This may include requiring the Proposer to Provide references from customers who have been Provided the same or equivalent Goods or Services. References shall include the names and addresses of the parties to whom such goods or Services were Provided and the name and phone number of contact Persons with such parties.
 - 2. The following elements shall be given consideration by the County in determining whether a Proposer is responsible:

- a. The ability, capacity and skill of the Proposer to perform the Contract or Provide the service required;
- b. The character, integrity, reputation, judgment and efficiency of the Proposer;
- c. Whether the Proposer has the financial resources and experience to perform the Contract properly and within the times specified;
- d. The quality and timeliness of performance by the Proposer on previous contracts with the County and with other third parties, including, but, not limited to, the relative costs, burdens, time and effort necessarily expended by the County and such governments and agencies in securing satisfactory performance and resolving claims;
- e. The previous and existing compliance by the Proposer with laws relating to public contracts or Services, including, but not limited to, Disadvantaged Business Enterprise (DBE) and equal employment opportunity requirements;
- f. The history of the Proposer in filing claims and litigation on prior projects involving the County or third parties; and
- g. Such other information having a bearing on the decision to award the Contract.

3. Financial Resources

Submit proof of adequate financial resources which would be available to the Proposer for the prosecution and completion of the Work as required. Refusal to Provide such information when requested shall cause the Proposal to be rejected.

When requested, the required financial information shall include:

- a. Audited financial statements such as balance sheets, statements of income, statements of cash flow and stockholders' equity for each of the three most recently completed fiscal years, including notes to financial statements, independent accountants' reports and annual reports to stockholders;
- b. Documentation of an open line of credit or other arrangement with an established bank under which adequate financing would be available for prosecution and completion of the Work called for hereunder;
- c. Certification by the principal financial officer of or an independent accountant for the Proposer, stating that the Proposer has adequate financial resources for the prosecution and completion of the Work called for hereunder; and
- d. The names, addresses and telephone numbers of at least one contact in the company's principal financial or banking organization and its independent auditor.
- e. Acceptable evidence of its ability to perform, such as firm commitments by Subcontractors, equipment, supplies and facilities, and the Proposer's ability to obtain the necessary personnel.

2.4 **Evaluation Criteria**

- A. The PE shall score each proposal on the completeness and adequacy of the Proposer's responses and on additional available relevant information. The criteria, listed in descending order of importance, used by the PE in evaluation of proposals shall include the following:
 - 1. Completeness of proposal as defined in the RFP
 - 2. Meet technical and functional RFP requirements
 - 3. Pricing
 - 4. Company information, the stability and viability of the proposer

5. References from firms with similar inventory systems successfully installed

B. Although all elements of a proposal are important, certain aspects of the proposal may be more heavily considered than others, however, the County is not required to choose the lowest proposed cost. The County shall select the Proposer(s) that, in the County's sole discretion, is the most advantageous to the overall needs of the County.

C. The evaluation of proposals may also include criteria addressed elsewhere in the RFP.

2.5 Proposal Scoring and Priority

Evaluation Criteria		
Category	General Capabilities Evaluated	Points
Subsection 2.5.1 Technical Requirements	<ul style="list-style-type: none">• Installation plan and Compatibility to King County schedule constraints per Section 6.3• Compatibility to King County operating system environment per Section 6.4,B• Compatibility to King County server environment per Section 6.4,B	10
Subsection 2.5.2 Functional Requirements	<ul style="list-style-type: none">• Compatibility of proposed horizontal carousel capabilities to King County requirements• Compatibility of inventory management software capabilities to King County requirements• Compatibility of wireless handheld device solution to King County requirements	30
Subsection 2.5.3 Qualifications/Experience	<ul style="list-style-type: none">• Number of Completed Similar Projects• Business References• Financial References	20
Subsection 2.5.4 Pricing	<ul style="list-style-type: none">• Price of carousels• Price of inventory management software• Price of proposed software customizations, if any• Price of wireless handheld device solution• Price of installation and integration	40
	TOTAL	100

Each Proposal has a total possible score of 100 points.

2.6 Proposal Scoring and Priority

The Proposal Evaluators shall meet and review all of the submitted Proposals to determine if they meet the required qualifications. The Proposals that do not meet all of the requirements may be deemed non-responsive. The Proposal evaluators will score the proposals in accordance with Section 2.5.

In the event clarification questions are issued to Proposers or oral presentations are requested, the scoring shall be adjusted to reflect the new information.

2.7 Competitive Range

The evaluation of Proposers' Proposals and additional information may result in successive reductions of the number of Proposals that remain in the competitive range. If applicable to the procurement, the firms

remaining in the competitive range may be invited to continue in the Proposal evaluation process, and negotiations.

2.8 Negotiations

The County may enter negotiations with one or more Proposers to finalize Contract terms and conditions. Negotiation of a Contract shall be in conformance with applicable federal, state and local laws, regulations and procedures. The objective of the negotiations shall be to reach agreement on all provisions of the proposed Contract. In the event negotiations are not successful, the County may reject Proposals.

2.9 Contract Award

Contract award, if any, shall be made by the County to the responsible Proposer whose Proposal best meets the requirements of the RFP, and is most advantageous to the County, taking into consideration price and the other established evaluation factors. The County is not required to award a Contract to the Proposer offering the lowest price. The County shall have no obligations until a Contract is signed between the Proposer and the County. The County reserves the right to award one or more contracts as it determines to be in its best interest.

2.10 Insurance Requirements

The Proposer to whom the County awards a Contract pursuant to this RFP shall file with the County evidence of insurance from insurer(s) satisfactory to the County certifying to the coverages of insurance set forth in this RFP. Such evidence of insurance shall be submitted within ten (10) Days of receipt of a written request from the County.

Failure by the Proposer to submit satisfactory evidence of insurance shall result in rejection of the Proposal.

2.11 Public Disclosure of Proposals

This procurement is subject to the Washington Public Disclosure Act, RCW 42.17.250 *et seq.* Proposals submitted under this RFP shall be considered public documents unless the documents are exempt under the public disclosure laws. After the selection process has been concluded and a contract has been signed by both parties Proposals shall be available for inspection and copying by the public

If a Proposer considers any portion of its Proposal to be protected under the law, the Proposer shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If the County determines that the material is not exempt from public disclosure law, the County shall notify the Proposer of the request and allow the Proposer fifteen (15) Days to take whatever action it deems necessary to protect its interests. If the Proposer does not take such action within said period, the County shall release the portions of the Proposal deemed subject to disclosure. By submitting a Proposal, the Proposer assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

SECTION 3. STANDARD CONTRACTUAL TERMS AND CONDITIONS

3.1 Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be Provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

3.2 Contract Changes

No oral order or conduct by the County shall constitute a Contract change. Both parties shall agree to contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every contract change may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

3.3 Cost or Price Analysis

Cost or Price Analysis may be required by the County for the evaluation of Proposals, Best and Final Offers, negotiations, contract changes, terminations, revisions to contract requirements or other circumstances as determined by the County.

3.4 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A Notice to Cure shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination;
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for Services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this contract or a related Purchase Order to Provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

3.5 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

3.6 Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

3.7 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor shall maintain and be liable for all taxes, fees, licenses and costs as may be required by applicable federal, state or local laws and regulations for the conduct of business by the Contractor and any sub-contractors and suppliers shall secure and maintain such licenses and permits as may be required to Provide the Work under this Contract.

3.8 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

3.9 Indemnification and Hold Harmless

A. Patent and Copyright Indemnity

The Contractor shall protect, indemnify, defend and save harmless the County from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the County gives Contractor prompt notice of any infringement claim brought against the County regarding the Software and the County gives Contractor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for the County the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Contractor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the County. Contractor shall have no liability to indemnify or defend the County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County but not by the contractor; or (ii) use of the Software other than in accordance with the Documentation. If the County is required to defend itself or enter into a settlement agreement due to Contractor's failure to defend, Contractor shall indemnify the County for its costs and expenses as well as any judgment entered against the County.

B. Indemnification For All Other Actions

Contractor shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to

Persons and/or damage to tangible property, arising out of or in any way resulting from each party's own acts or omissions to the extent each party is liable for such acts or omissions. Contractor's indemnification obligation shall include but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. **Limitation of Liability**

Except for the County's intentional and willful violations of Contractor's intellectual or proprietary rights, which can be attributed to the County management, and injuries to persons by either party Neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under this Contract shall be limited to 2 X (times) the value of the contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

3.10 Applicable Law and Forum

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

3.11 Conflicts of Interest and Non-Competitive Practices

A. **Conflict of Interest**

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. **Contingent Fees and Gratuities**

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3.12 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

3.13 Mediation and Arbitration

Nothing in this subsection precludes any party from seeking relief from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

3.14 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).

3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. **Proof of Compliance with Contract**

The Contractor shall, upon request, Provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

3.15 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

3.16 Recycled Products Policy

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

Ref: KCC 10.14

3.17 Conflicts of Interest - Current and Former Employees

The County seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former County employees in transactions with the County. Consistent with this policy, no current or former County employee may contract with, influence, advocate, advise, or consult with a third party about a County transaction, or assist with the preparation of Proposals submitted to the County while employed by the County or within one (1) year after leaving the County's employment, if he/she participated in determining the Work to be done or process to be followed while a County employee.

All bidders, Proposers, vendors or contractors who anticipate contracting with the County shall identify at the time of offer, such current or former County employees involved in preparation of bids/Proposals or the anticipated performance of the Work if awarded the Contract. Failure to identify former County employees involved in this transaction may result in the County's denying or terminating this Contract. In addition, after award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract

Ref: KCC 3.04.015C; 3.04.035B; 3.04.035D; 3.04.035E; 3.04035H1; 3.04.035H2.

3.18 Nondiscrimination And Equal Employment Opportunity

A. **Nondiscrimination in Employment and Provision of Services.**

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code

Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices.

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Compliance with Laws and Regulations.

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits.

The County may, at any time, visit the Project Site, Contractors' and subcontractors' offices to review records related to the solicitation, utilization, and payment to subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to King County for inspection and copying upon request. Sanctions for Violations. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

3.19 Disadvantaged Business Enterprise (DBE) Participation

- A. Nondiscrimination 49 CFR part 26. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.
- B. DBE Program. The County has determined that no DBE goal shall be established for this Contract. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.

- C. Efforts to Increase DBE Participation. Even though this Contract has no DBE goal, the County still encourages Contractors to pursue opportunities for DBE participation. To that end, Contractors are encouraged to:
1. Advertise opportunities for subcontractors and suppliers ("subcon-tractors") in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting Proposals directly from DBEs.
 2. Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.
 3. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
 4. Achieve DBE attainment through joint ventures.
- D. DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693. For purposes of this Contract, a DBE firm shall be certified by OMWBE as of the date and time of bid submittal.
- E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance with this Section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:
- King County
Office of Business Relations and Economic Development
M.S. KCC-EX-0402
516 Third Avenue, Room E550
Seattle, WA 98104-1598
Phone: 206-205-0700
Fax: 206-205-0719

3.20 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

3.21 Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

3.22 Domestic Partner Benefits (Non-Discrimination in Benefits)

King County's Domestic Partner Benefits (DPB) Ordinance 14823 prohibits the award of contracts valued at \$25,000.00 or more to firms that discriminate in the provision of employee benefits between employees

with spouses, and employees with domestic partners. To be eligible for award, Contractors shall comply fully with the ordinance's provisions. Within five (5) days of notification of intent to award, and as a condition of the execution of a contract, the successful bidder/proposer shall provide to King County Procurement & Contract Services Section a completed Attachment F – Domestic Partner Benefits Declaration Form. This form is available online at <http://www.metrokc.gov/finance/procurement/forms.asp>.

SECTION 4. SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

4.1 Execution of the Contract

The documents constituting the Contract between the County and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 1. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County shall issue Purchase Orders detailing the Work to be performed.

4.2 Contract Term

The term of this Contract shall be five (5) years in one (1) year increments, commencing on the effective date of the Contract and subject to the termination provisions at subsection 3-4 or as described in the Scope of Work. The Warranty Period begins at Final Acceptance for a period of twelve (12) Months. Upon the completion of the Warranty Period, the Maintenance Agreement runs from year to year unless terminated as described in this Contract. The maximum term for this Contract, consisting of the base period plus extensions, is five (5) years unless extended by written agreement signed by all parties.

4.3 Notices

All notices or documentation required or Provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.

For Project Management related notices or documentation

KING COUNTY	CONTRACTOR
Project Manager – Robert Wade	
201 S. Jackson Street, MS KSC-TR-0333	
Seattle, WA 98104	
206-684-1516	
robert.wade@metrokc.gov	

For Contract related notices or documentation contact:

King County Procurement and Contract Services Section	
M.S. EXC-FI-0871	
Exchange Building, 8 th Floor	
821 Second Ave.	
Seattle, WA. 98104-1598	
Buyer - Alan Terhune	
(206) 684-1067	
alan.terhune@metrokc.gov	

4.4 Payment Procedures

A. Invoices

The Contractor for Work Accepted by the County shall furnish invoices to:

King County Accounts Payable
M/S EXC-ES-0875
Exchange Building, 8th floor
821 Second Avenue
Seattle, WA 98104-1598

Important – When a purchase order is issued against this Contract and has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number, prompt payment discount and invoice total. For each item delivered identify: quantity, description and contract price; when applicable provide the model, version, serial number and discounts. For services identify from Attachment B, either milestone Acceptance or hourly rates, hours worked, total hours or related fees.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice. All prices listed in Attachment B constitute full compensation due the Contractor for providing the applicable Work, including but not limited to the costs of labor, materials, services, license rights, supervision, facilities, equipment, supplies, administrative overhead and profit.

C. Payment Milestones

The County will accept invoices for payment of the products and services awarded under this RFP based on the amount of the proposed prices and on the completion and acceptance of specific deliverables. Payment amounts will be tied to milestones with a withhold percentage retained by the County until Final Acceptance. The details of the milestones, price and withhold amounts will be as negotiated with the selected Contractor.

Service/ Deliverable	Est. Payment s	Acceptance Criteria	Estimated Timing (After Award)
Delivery: of Carousels and peripherals	70%	Receipt at Distribution Center of carousels, related hardware items, including lift table, light bars and other related items.	6 Weeks
Installation: of Carousels and peripherals	70%	Installation at Distribution Center of carousels and related hardware items, including lift table and light bars. Hook-up to power system. Successful application of basic carousel diagnostics.	10 Weeks
Delivery: of Inventory Management Software	70%	Receipt at Distribution Center of the off-the-shelf Inventory management software application	10 Weeks
Installation and	70%	Installation of software on Distribution Center server and desktop computers. Successful testing of functional	14 Weeks

Customization: of Inventory Management Software		requirements for carousel operation, data elements and data storage on all carousels, and printers.	
Delivery: of Handheld Devices	70%	Receipt at Distribution Center of the handheld devices.	14 Weeks
Programming: of Wireless Handheld Devices	70%	Custom programming to support communication between Inventory Management Software Application and handheld devices. Installation of handheld device telecommunication solutions. Successful testing meeting functional requirements of the handheld device to Inventory Management Software Application.	18 Weeks
Final Acceptance	Release of Retained Value	Integration of the new system elements - including carousels, peripherals, off-the-shelf and custom software, and handheld device solution - with the previously existing carousels and peripherals. Successful import of data from old software to new Inventory Management Software Application. Receipt of system training. Receipt of system intellectual property. Thirty days of error free operation.	28 Weeks

Following the Warranty Period:

1. The costs of repair/replacement of Handheld Devices shall be payable following the County's receipt of the repaired/replacement device.
2. The costs of on-site maintenance will be payable on a semi-annual basis.
3. The costs of software maintenance shall be payable on a semi-annual basis.

D. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) Days from the receipt of each payment the Contractor receives from the County.

4.5 Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

4.6 Purchase Orders

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in Attachment B. The purchase orders issued by the County may reflect agreed to modification of Contract terms, funding or other matters subject to subsection 3-2, Contract changes.

4.7 Pricing

The prices set forth in Attachment B, "Price Schedule," shall remain in effect throughout the term of the Contract

4.8 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

4.9 Cost Mark-Up

Contractors shall not mark up Subcontractor costs and other direct costs. The cost for Subcontractor management shall be segregated into a single cost item and included as a separate task in Attachment B.

4.10 Direct Costs Related to Additional Work

Direct costs for additional Work shall be billed at cost without markup.

Reimbursement of Contractor travel, lodging and meal expenses are limited to the eligible costs based on the rates and criteria established in King County Code, chapter 3.24.

- A. The mileage rate allowed by King County shall not exceed the current Internal Revenue Services (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during Work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If a Person does not request government rates, he/she may be Personally responsible for the difference. Please reference the IRS web site for current rates. <http://www.irs.gov/>.
- B. Reimbursement for meals shall be limited to the per diem rates established by Federal travel requisitions for the host city in the code of Federal Regulations, 41 CFR § 301,App.A.
- C. Accommodation rates shall not exceed the Federal Lodging limit plus host city taxes. The Contractor shall always request government rates.
- D. The direct costs contained in A, B and C above shall only be authorized by the County Project Manager for Contractor staff living beyond commuting distance, normally considered to be for the travel beyond 100 miles of 821 Second Avenue, Seattle, WA.
- E. Air travel shall be by coach class at the lowest price available at the time the the County Project Manager requests a particular trip. In general, a trip is associated with a particular Work activity of limited duration and only one round-trip ticket, per Person, shall be billed per trip.
- F. Cost for equipment, materials and supplies, such as approved equipment rental; telephone, telegraph and cable expenses; reproduction costs including blueprinting, photographing, telecopying, mimeographing, photocopying and printing; express charges; commercial printing, binding, art Work and models; and, computer programming and data entry costs shall be billed without markup.
- G. Authorized subcontract Services; provided that the limitations set forth in the above paragraphs shall be applicable to such subcontract services.
- H. Other direct costs, not listed above, may be billed if the County has given prior approval.
- I. Receipts required for purchases \$10 and over, not including meals.

4.11 Acceptance Process

King County may give iterative acceptances as the Work is accomplished either by Phase or Milestone. The Contractor will give the County "notice of completion" of Work related to a specific Milestone following the Contractor's completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. Acceptance process. Upon completion of the Milestone deliverables the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the criteria set forth in Section 4.4, C. Within ten (10) Days of notice by Contractor of completion of the Milestone, County will issue a written notice of Milestone Acceptance or provide Contractor with a Notification of Rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the Deliverable Guidelines.
- B. Correction of deficiencies process. If a deliverable is rejected, Contractor will have a commercially reasonable time to correct items documented in the County's Notification of Rejection. Within ten (10) Days following the delivery of Contractors' notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Contractor with a Notification of Rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the Milestone, in which case the process set forth in this subsection shall be repeated until the County issues a written notice of Acceptance

4.12 Final Acceptance

The Contractor shall achieve Final Acceptance no later than eight (8) months following receipt of notice to proceed from the County. The County shall begin the Final Acceptance process in accordance with the Contract as follows:

- A. The parties shall agree on the start date for the Acceptance test.
- B. The Acceptance Test shall include thirty (30) continuous Days of operation of the Work without material defect in accordance with Section 4.4, C of the Contract.
- C. If the County Accepts the Work, the County will send a Notice of Final Acceptance to the Contractor.
- D. If County determines that the Work is not acceptable, the County shall notify the Contractor in writing, describing the deficiencies.
- E. The Contractor shall either provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period with no charge to the County. The parties shall mutually agree on a start date for beginning another Acceptance test.
- F. Another thirty (30) Day successful operation period shall follow any corrections or replacements to the Work. Two or more thirty (30) day operation Acceptance test periods can occur if mutually agreed to by the parties.
- G. If the County Accepts the Work following a second or subsequent Acceptance test, the County will send a Notice of Final Acceptance to the Contractor.
- H. If the Contractor does not correct or replace the unacceptable Work the County may declare a breach of contract.

4.13 General Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.
- B. Warranty Term. The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform with all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially Provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors. The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is

responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

4.14 Intellectual Property Warranties

- A. Software - Contractor warrants that on the date of Final Acceptance, the Software provided hereunder shall be free from significant programming Errors and when used in accordance with user manuals shall operate and conform to the Scope of Work, performance capabilities, functions and other descriptions and standards as identified in this Contract and all supplemental information Provided by Contractor.
- B. Services - Contractor warrants that any services related to the Software shall be performed in a timely and professional manner by qualified professional person-nel with in-depth knowledge of the purchased Software; and that the services shall conform to the standards generally observed in the industry for similar services.
- C. Contractor warrants that it has full power and authority to license or sublicense the Software to the County without the consent of any other Person.
- D. Contractor warrants that the performance of the services related to the Software and the licensed use of the Software by County as permitted by this Contract, including copying, shall not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other right of any third party.
- E. Contractor warrants that the Software, the License to the County to use the Software, instructions for use of the Software and the performance by Contractor of the services, shall be in compliance with all applicable laws, rules and regulations.
- F. Contractor warrants the tapes, CD's, DVD's or other media delivered to the County to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the County.
- G. Contractor warrants that the Software provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Contractor further warrants that neither the Software alone or through Contract with the Contractor is capable of electronic self-help that may deprive the County of the use of the licensed Software.
- H. Contractor warrants that future maintenance or Software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or Software for continued operation of the Software.
- I. The Contractor warrants Functionality as described in the Scope of Work and represents that the configuration identified in the Contract document has been specifically selected and designed for the County as being an operationally efficient integration of hardware, Software and services.
- J. The Contractor shall be responsible for providing and implementing a Software system that is successfully integrated into the existing system environment of the County and meets the functional requirements as specified in this Contract.

4.15 Equipment Warranty and Post Warranty Maintenance

- A. The Contractor shall provide on-site maintenance for the Carousels and depot maintenance for the Handheld Devices, in accordance with the provisions of this Section 4.15, at no charge to the County during the Warranty Period. Following the Warranty Period and for the duration of the Contract, the Contractor shall provide on-site maintenance for the Carousels and depot maintenance for the Handheld Devices in accordance with the terms of this Section and for the prices set forth in Attachment B.
- B. The Contractor shall, at the County's request but in any event no less than two times per calendar year, provide on-site maintenance for the Carousels provided under this Contract as well as the County's other carousels not supplied by the Contractor. The on-site maintenance obligations of the Contractor shall be as recommended by the O.EM.(s) of the carousels installed at the Distribution Warehouse.
- C. In the case of a defective Handheld Device, the County will ship the defective unit to the Contractor and the Contractor shall complete the repair within fourteen (14) days of receipt. If the Contractor is unable to repair the Handheld Device and can provide documentation of such inability to the satisfaction of the County, then the County has the option of requiring the Contractor to return the defective unit and/or purchasing a new replacement unit at the price set forth in Attachment B. Notwithstanding the provisions of this subsection, during the Warranty Period the Contractor shall replace any defective Handheld Device at no charge to the County.

4.16 Software Warranty and Post-Warranty Maintenance

- A. For the duration of the Warranty Period, the Contractor shall provide, at no cost to the County, any support, maintenance, updates and Enhancements on all Software provided under the Contract, wherever located, in accordance with the Contract requirements and the Software Maintenance Exhibit attached to this Contract as Attachment P.
- B. Following expiration of the Warranty Period, the Contractor shall provide support, maintenance, updates and Enhancements on all Software provided under the Contract, wherever located, in accordance with the Contract requirements and Attachment P, Software Maintenance. The Contractor shall provide these services for the annual fee set forth in Attachment B, Price Schedule.

4.17 Defective Work

Prior to Final Acceptance, when and as often as the County determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within seven (7) Days of receiving such written notification, the Contractor shall supply the County with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The County may reject or accept this plan at its discretion. If the County rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

4.18 Intellectual Property

- A. General
 - 1. In designing, developing, and implementing the Distribution Center Storage and Inventory Management System, and in performing its Software Maintenance and other obligations under the Contract, the Contractor shall ensure that there is no misappropriation, infringement or other violation of any Intellectual Property rights of any third party. The Contractor shall be

responsible for obtaining all required licenses, for the benefit of the County, to ensure that there is no misappropriation, violation or other infringement of any Intellectual Property rights.

2. The Contractor warrants that, with respect to all personnel performing services related to this Contract who are not employees of Contractor, Contractor shall have acquired, prior to the performance of services by such individuals, all possible ownership and Intellectual Property in and to any Intellectual Property to be created in whole or in part by such individuals pursuant to this Contract.
3. The Contractor will take all appropriate action required or requested by the Project Manager to perfect and protect the County's rights in Intellectual Property obtained under this Contract, including but not limited to executing documents required for applications for patents, copyright registrations, and trademark registrations, using appropriate proprietary notices, and keeping confidential all trade secret information.
4. All rights and licenses granted to the County under this Contract are, and shall be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"), licenses to rights to "intellectual property" as defined under the Code. The parties agree that the County, as a licensee of such rights under this Contract, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of bankruptcy proceedings by or against the Contractor under the Code, the County shall be entitled to retain all of its rights under this Contract.
5. The licenses and rights granted to the County under this Section 4.18 and Attachment Q, Escrow Agreement, shall survive and remain in full force and effect notwithstanding any expiration or termination of this Contract. The parties specifically agree that the following sections shall survive any expiration or termination of this Contract:

Page 5 Definitions

Section 4.18 Intellectual Property

Section 4.14 Intellectual Property Warranties

Section 4.13.A No Waiver of Warranties and Contract Rights

Section 3.9 Indemnification and Hold Harmless

Attachment Q Escrow Agreement

B. Pre-Existing Intellectual Property

1. The Contractor hereby grants to the County, at no additional cost, a perpetual, nonexclusive, transferable, sublicenseable, paid-up and royalty-free license to the Pre-Existing Intellectual Property and IP Materials for the Pre-Existing Intellectual Property, to the extent more fully specified herein, for both the period during and the period after this Contract.
2. During the term of this Contract, the County shall have the right to use, copy, and store on County equipment or other applicable media, for the purposes of operating and maintaining the Distribution Center Storage and Inventory Management System, the following IP Materials for the Pre-Existing Intellectual Property:
 - a. the compiled executable code for each program, module and element of software and firmware in the Pre-Existing Intellectual Property and the interface specifications for each program;
 - b. the compiled executable code of any Third Party Software and public domain software incorporated into the Pre-Existing Intellectual Property and interface specifications to same to the extent provision of interface specifications is permitted by third party owners;
 - c. Security algorithms; and

- d. User Documentation including but not limited to user manuals, training manuals, and maintenance manuals.
3. Upon any expiration or termination of this Contract, the County shall have the right to use, copy, store, maintain, modify, update, upgrade, make Derivative Works from, and adapt all Pre-Existing Intellectual Property and IP Materials for the Pre-Existing Intellectual Property for the purposes of completing development of, and/or operating, maintaining, expanding, improving and modifying the Distribution Center Storage and Inventory Management System.
4. The Contractor shall deliver Pre-Existing Intellectual Property and IP Materials for Pre-Existing Intellectual Property to the County to the extent required in this Section and at such times as Pre-Existing Intellectual Property is required to be provided in order to complete the scheduled tasks and milestones set forth in this Contract. The Contractor shall also deposit in escrow IP Materials for Pre-Existing Intellectual Property within thirty (30) days following execution of this Contract.

C. Intellectual Property Developed for County

1. All data and Work (collectively called "Work Product") produced pursuant to this Contract, including all Contract Deliverables, Intellectual Property and Intellectual Property Materials, shall be considered "work made for hire" under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by King County. Contractor is hereby commissioned to create the Work Product. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
2. If for any reason the Work Product would not be considered a "work made for hire" under applicable law, Contractor assigns and transfers to the County the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
3. Contractor shall execute all documents and perform such other proper acts as the County may deem necessary to secure for the County the rights provided pursuant to this section.
4. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of the County. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcon-tractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
5. The Contractor shall deliver to the County the IP Materials related to the Work Product in accordance with the deliverable requirements set forth in Section 4.4, C.

4.19 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

4.20 Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

4.21 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third (3rd) party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third (3rd) party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third (3rd) party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

4.22 Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public.

If a Contractor considers any portion of the Work, including Software, data and related materials, delivered to the County to be protected under the law, the Contractor shall clearly identify each such item with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents. If the material is not exempt from public disclosure law, the County shall notify the Contractor of the request and allow the Contractor ten (10) Days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing this Contract, the Contractor assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

4.23 Board of Ethics Disclosure Requirement

Pursuant to King County code 3.04.120, the Consultant shall file a Contractor Disclosure Form with the Board of Ethics and the King County Executive, attached hereto as Attachment M.

4.24 Pricing of Spare Parts

The County shall have the right to conduct a Cost or Price Analysis on specific spare parts if pricing appears to be in excess of standard industry pricing for similar parts. Any differences shall be subject to negotiations to the satisfaction of the County. The County is not required to purchase spare parts under this contract if it can purchase the same item(s) from another source under terms that are more advantageous to the County.

4.25 No Prototype Components

All hardware, Software and Work, shall be in production and be used by customers comparable to the County at the time of the Contract effective date. Test or prototype items shall be clearly identified as such. A sufficient inventory of the Work shall be available to meet delivery requirements.

4.26 Industrial and Hazardous Waste

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

4.27 Prohibition on Asbestos-Containing Products

Asbestos-containing products shall not be provided to the County under this Contract, unless no practicable alternative for the asbestos-containing product exists and the Contractor obtains the written consent of the County. The Contractor shall notify the County in writing at least sixty (60) Days before it plans to supply the County with an asbestos-containing product. The County shall respond to such notification within thirty (30) Days of receipt. The Contractor shall comply with applicable state, federal and local labeling and other laws, regulations and ordinances pertaining to asbestos-containing products, including, but not limited to, the State of Washington Industrial Safety and Health Act and the federal Occupational Safety and Health Act.

4.28 Patents and Royalties

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

4.29 Design Defects

The County shall declare a design defect in the event that ten percent (10%) of the items purchased under this Contract fail for the same failure. The County shall notify the Contractor of the defect in writing; the Contractor shall provide a modification, redesign or a plan to correct the defect within seven (7) Days of receipt of the notification.

The warranty period and terms for corrected items shall be the same as for the initial items purchased under this Contract. An extended Warranty on items determined to be design defects shall have the same term as the original warranty. This extended warranty shall begin on the correction of the defect.

If repairs or modifications made necessary by design defects are not completed for an extended period of time, the extended period of the lack of correction shall not be considered in computing the warranty end date. The same warranty shall remain in effect until a correction is implemented.

4.30 Changed Requirements

New Federal, State and County laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 3-2, Contract changes.

4.31 Counterparts

This Contract may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Contract.

4.32 Performance and Payment Bond

- A. The Proposer to whom the County awards this Contract shall furnish a performance and payment bond on the form Provided in Attachment D, "Performance and Payment Bond," in the amount of 100 percent of the total Contract Price as security for the faithful performance of the Work, including the payment of all Persons furnishing materials and performing labor on the Work, and all payments arising from the performance of the Work due the State of Washington pursuant to Titles 50 and 51 RCW. Such bond shall be submitted to the County prior to execution of the Contract. A duly licensed surety company, which is registered with the Washington State Insurance Commissioner, shall execute such bond and the surety's name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner. The scope of the performance and payment bond or the form thereof prescribed in Attachment D shall in no way affect or alter the liabilities of the Contractor to the County under Section 3.9 "Indemnification."
- B. The County may require the sureties or surety company to appear and qualify themselves upon the bond. If at any time, the County determines, in its sole judgment, that the sureties or surety company are insufficient, the County may require the Contractor to furnish additional surety in form and arrangement satisfactory to the County and in an amount not exceeding that originally required. Payments shall not be made on the Contract until sufficient surety as required is furnished.

4.33 Escrow Agreement

A source code escrow agreement in substantially similar form as Attachment Q shall be executed as part of this Contract.

4.34 Bug Status Reports

The Contractor shall Provide to the County Bug Status Reports specifying all known outstanding bugs in the current version of the Software. The initial Bug Status Report shall accompany the Software when delivered. Subsequent reports shall be Provided Monthly or as agreed to by the County Project Manager.

4.35 Enhancements, Upgrades, Replacements and New Versions of Software

- A. The Contractor agrees to Provide to the County, at no cost, prior to, and during installation and implementation of the system any Software/firmware Enhancements, upgrades and replacements which the contractor initiates or generates.
- B. As long as the County has a maintenance agreement for the Software, the Contractor shall notify the County of the availability of newer versions of the Software and within thirty (30) Days supply the County with this new version. The new version shall be Provided to the County without charge. The Contractor shall Provide free updated Software Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Software Documentation supplied and reflecting the changes included in the new version of the Software. The Contractor shall Provide Bug Status Reports specifying all known, outstanding bugs in the new Software versions. The information shall be updated periodically as new information and work-arounds become known. The Contractor shall also Provide free installation instructions, procedures and any installation program required by the installation.

SECTION 5. INSURANCE REQUIREMENTS

5.1 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County will receive notice at least 45 Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the County, deliver to the County all such policy of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.

Failure to Provide such insurance in a time-frame acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/ Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

5.2 Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent Provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the applica-tion of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims made" basis, the contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.

- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

- 2. Automobile Liability

Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

- 3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that services pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be Provided.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection Provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection Provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

The Contractor shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in the Aggregate.
4. Workers' Compensation: Statutory requirements of the state of residency.
5. Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

Use this exact language on the Endorsement form

- a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract.
- b. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the contractor in any way.
- c. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

G. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

H. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

I. Endorsements

The County requires this Endorsement to complete the Contract.

Endorsement must be included with insurance form. Examples of forms are standard industry forms "2010 111" or "GC 76 80 10 00.

SECTION 6. SCOPE OF WORK

6.1 Implementation

System configuration and prototyping is the primary responsibility of the Contractor. The core Software system shall be configured, prototyped, refined, tested, Updated and documented by the Contractor. The County shall accept the system for roll out only after a successful user Acceptance test is performed.

The Contractor shall not be relieved of its obligation to Provide a completely integrated system if the County creates interface programs.

6.2 Contractor Responsibilities

The Contractor shall be responsible for performing the Work described in the Scope of Work. Each written deliverable shall require an acceptable preliminary draft to precede Acceptance of deliverable and work completion.

6.3 Work Site Restricted Access

During the following time periods access to the Distribution Warehouse facility will not be available: May 11, 2004 through June 18, 2004; August 31, 2004 through October 8, 2004; and January 4, 2005 through February 11, 2005. These are the three major bus schedule changes requiring complete change of existing schedules, and their distribution throughout King County.

6.4 Background

A. Overview

King County is a multi-purpose government serving a population of 1.7 million county residents. Located in the Puget Sound region of Washington State, King County covers more than 2,100 square miles.

Metro Transit - a division of King County's Department of Transportation - provides comprehensive public transportation services throughout the county, including bus and trolley service, paratransit, ridesharing services, park and ride facilities, etc. In support of these services, Metro Transit produces a comprehensive set of customer information resources.

The Metro Transit Information Distribution unit is responsible for receiving, storing, tracking, distributing and reporting on a wide range of Metro Transit related customer service printed materials, including timetables, brochures and maps. These materials are available to the public in a variety of outlets, including transit centers, businesses, schools, libraries, Metro Transit facilities, etc. Materials are either delivered to outlets by Information Distribution Center distributors working out of vans, if distributing a substantial volume of material; or mailed to outlets distributing a smaller volume of material.

Metro Transit has three "services changes" each year. Service changes involve scheduled modifications to bus service that necessitate the unit distributing new paper timetables and related materials. Other printed materials are added, removed or replaced in the distribution queue on a less predictable schedule.

The unit operates out of the 7,400 square foot Information Distribution Center at 1523 Sixth Avenue South in Seattle. The facility includes:

1. A lobby
2. Two administrative offices
3. Shared work area including:
 - a. Desks for field distributors

- b. Modem workstation for receiving field downloads
 - c. Docking and charging station for battery replenishing of field handheld devices and in-house download of data
 - d. Break room
 - e. Two restrooms
 - f. A janitor's storage/facilities HVAC computer room
4. Warehouse space housing:
- a. Two White Systems horizontal carousels and a vertical lightbar
 - b. One pick station (with a computer workstation) and a horizontal lightbar
 - c. One lift table
 - d. One 5 station rolling conveyer rack for order holding
 - e. Shelving
 - f. Open floor space

The Information Distribution unit is staffed by:

- One supervisor
- One project assistant
- One warehouseman
- Five distributors who spend the bulk of their time in the field

Virtually all distribution activities are coordinated by an inventory management computer application. Along with the hardware described above, the computer application helps the unit staff receive, store, distribute and report on the many materials the unit handles. The inventory management software is a ten-year old custom vendor-provided Magic 5.02 application utilizing a Pervasive Btrieve database.

Using batch pick lists produced by the inventory management software, the warehouseman (and sometimes the distributors) pick and prepare the materials for shipment.

The unit's distributors are supported by five vans, equipped with handheld devices and radio-based telecommunications devices. Each distributor is responsible for a specific service area. As distributors make stops within their areas, the handheld devices are used for storing data about materials distributed at each location, as well as storing data about items requiring restocking when low supply items are encountered in the field. The handheld devices upload data via a radio-based docking work station device. The data (on both stocking activities and restocking requirements) is downloaded to the docking workstation at the unit facility described above, and made available to the inventory management software.

On a yearly basis, the Information Distribution Center handles approximately 86 million pieces of material.

B. Problem and Anticipated Solution

The now ten-year old Distribution Center hardware and software system is showing its age, suffering from both breakdowns in software functionality and the unavailability of replacement parts for critical, but no longer vendor supported, system hardware elements. In addition, the two horizontal carousels no longer support the storage requirements of the group.

In order to solve the problems described immediately above, Metro Transit seeks to acquire:

- Two additional horizontal carousels,

- a replacement inventory management software application,
- a replacement handheld device and handheld device communication solution, and
- integration services required to knit the components into a system responsive to the functional requirements found below.

The two horizontal carousels procured in this project should be similar in size and compatible with the existing White Systems units at the facility. The new inventory management software application shall be compatible with a King County approved

version of the Windows operating system: Windows XP Professional (preferred); and/or Windows XP; and/or Windows 2000. Compatibility to King County's server environment is also required which shall be Microsoft SQL Server (preferred) and/or Oracle. The replacement handheld device shall provide wireless data communication to the inventory management software application; any work required to accomplish this communication is part of this project. The integration services shall include any required handheld device customizations, installation of all hardware and software, integration of the existing and added carousels into a working system, as well as installation and testing of the entire solution.

C. Project Business Objectives

Completion of this project will double the horizontal carousel capacity of the Metro Transit Information Distribution Center. This increase will ease the capacity problem at the Information Distribution Center, which currently is burdened by insufficient storage, particularly during service changes.

The inventory management software solution should be an off-the-shelf Windows-based application. The inventory management software requirements of the Information Distribution Center are similar to many other organizations that distribute large volumes of information. Using an off-the-shelf application should benefit the Information Distribution Center by allowing for standard maintenance and upgrade arrangements.

Reliable wireless communication via a handheld device is another important project outcome. Because of staffing and hours of work, it is critical that data on restocking requirements from the many remote locations arrive smoothly throughout the day, so that the warehouseman can efficiently prepare shipments for the next day's deliveries.

Desired project outcome will result in a fully functional system with: (1) the planned doubling of carousel capacity, (2) replacement of the inventory management software, and (3) replacement of the current wireless field telecommunications system. This outcome should be sufficient to meet Distribution Center business requirements for up to 10 years, assuming normal maintenance practices.

6.5 **Purpose**

The Purpose for this Request for Proposal is to solicit proposals from qualified vendors to provide both hardware and software for the modernization / upgrade of the Transit distribution center storage and inventory management system. Adding/integrating 2 carousels (which may be used) to the 2 existing White Systems model WH-40 horizontal units is needed to double capacity. Inventory software will be needed to interface with all horizontal carousels to facilitate order placement through both computer terminals and wireless PDA's.

6.6 **System and Software Documentation**

Operating manuals, parts catalogs and other relevant documentation required to maintain and operate the integrated hardware / software system shall be provided by the proposer. A programmers manual shall also be included to assist in trouble shooting system operations in regard to the server / carousels /

and handheld devices. The programmers manual shall include diagnostics, utilities, and an error message glossary that includes definitions and corrective procedures.

6.7 Training Manuals and Hands On Training

A training manual shall be provided for the Inventory Management Software and carousels operation. The same type of manual shall be provided for the operation and use of the hand held devices with the Distribution warehouse hardware / software. For each training manual one or more classes shall be created to train County staff on the use and operation of the integrated software / hardware.

6.8 Hardware

King County will provide all Personal Computers, and Personal Computer Monitors. In addition, King County will also supply and install proposer specified wall mounted electrical switching equipment for powering the 2 added horizontal carousels. The proposer will be responsible for all wiring from the wall mounted electrical switching equipment to the two added carousels.

Two additional horizontal carousels need to be added and software integrated with the two existing carousels.

A. Carousel Unit Features

1. Add 2 White Manufactured WH-40 Units or Equivalent (used preferred)
2. Allow Foot Pedal Operation With Direction Indicator
3. Provide Lift Table That Smoothly Raises and Lowers to Bin Height
4. Provide a Horizontal Light Bar to Display Tote Position & SKU Quantity for Both Added Carousels
5. Provide a Vertical Light Bar for Both Added Carousels
6. Provide A Shared Pick Station With 8 or More Locations
7. New Pick Station Shall Have a Flat Screen Monitor Securely Mounted for Stable Operation
8. New Pick Station Software Shall Be Microsoft Windows Based (KC Approved)
9. New Pick Station Shall Have The Capability to Choose From All Carousels
10. Added Carousels Shall Have Industry Standard Safety Devices / Features
11. Provide a bin size of 23" inches Wide X 22" inches deep, with rack 10 Feet High
12. Provide one 5 station rolling conveyer rack for order holding

B. Hand Held Device (PDA) Unit Features

The Hand Held Device Should:

1. Be Capable of Being Read in Any Lighting Condition
2. Allow as Large a Screen As Is Practicable to Aid Legibility
3. Allow Alpha/Numeric Editing of Allowed Fields
4. Allow Remote Down & Up Load of Data
5. Allow Macro / Function Keys For Routine Labels / Tasks
6. Allow The Entering of Ad-Hoc Information
7. Be Capable of Surviving a 4 Foot Drop to a Concrete Floor
8. Be Capable of Repeating And Editing of Last Historical Order

9. Include calculator functions
10. Allow Up-Load & Down Load of Word and Excel Files
11. Include an Editable Field for Delivery Date
12. Include a Bar Code Reader Compatible with Code 39 Bar Code Format
13. Have Local Docking Station(s)
14. Allow voice communication (phone and possibly walkie-talkie)

C. Printer Features

1. Contractor Shall Provide one HP LaserJet 1300 printer, or equivalent to be approved by King County for the Distribution Center.
2. Contractor Shall Provide one Sato Label Printer Model CL412eU Direct Thermal/Thermal Transfer printer, 4.1", 305 dpi, USB, or equivalent to be approved by King County for the Distribution Center.

6.9 Software / Inventory Management System

A. General

Software must be integrated to allow computer on-line terminals, PDA's, printers, and inventory carousels to effectively communicate and process inventory information. Report writing capabilities shall allow the creation of add-hoc information reports, which will be export capable to Crystal Reports, and Microsoft Excel.

Inventory Management Software Features

The Inventory Management Software Should:

1. Be an Off-The-Shelf package Capable of Being Modified and Updated
2. Be Capable of Functioning With Both Added and Existing Carousels
3. Be Compatible With Microsoft NT 4.0 and or Windows XP Professional
4. Be Compatible with Microsoft SQL Server Format
5. Allow the Operation of Standard Inventory Reports
6. Be Compatible with Crystal Reports
7. Allow the Creation of Ad Hoc Reports
8. Allow Data History of At Least 5 Years
9. Allow Outside Clients Read Only Limited Access Through Permission(s)
10. Allow User Rights to be Created / Modified / Deleted
11. Allow Pass Word and Rights Assignment by a System Administrator
12. Allow Software Menu Rights Assignment
13. Allow The Assignment of User Supervisor Privileges
14. Restrict Workstation Access to Staff With authorized User Name / Password
15. Allow Transactions File to Store User Name For Each Software Interaction
16. Allow Data Editing on the Carousel Pick Station Computer
17. Allow Data Editing on the Database Administrator's Workstation Computer
18. Allow a Minimum Field Size of 50

19. Allow Material Expiration Time Intervals as Fixed, Flexible, or No Time Interval
20. Allow The Setting of Time Intervals for Transit Time Tables (Bus Schedules)
21. Allow Staff to Pull Up Individual Accounts for Picking
22. Allow For SKU's to be Created, Edited, Deleted
23. Allow at Minimum One Field Per SKU For Image(s)
24. Allow Multiple Units of Measure as in Each, Bundles, Bundles Per Case and Initial Delivery Quantities.
25. Allow Multiple Section Capacities (allow more than one item/part to be assigned to a single bin location)
26. Allow a Field for Desired Stock Level
27. Allow a Field for Minimum Stock Level
28. Allow Data Import to Add / Update / Delete Existing Records
29. Allow Multiple Inventory Classifications
30. Allow for FIFO (First In / First Out) Classification
31. Allow for LIFO (Last In / First Out) Classification
32. Allow for Lot Number Classification
33. Allow For Fixed Location Inventory
34. Allow For Off Carousel Manual Shelving Locations and Racking Areas
35. Allow For Operation With Pick and Put-To-Light Devices
36. Allow For SKU Locations to be Edited, Modified, Deleted
37. Allow For The Assignment of Totes to Locations
38. Allow For the Use of Pick Banding
39. Allow Shelving to be Added, Edited, Removed
40. Allow Orders to be Picked by Selecting Individual Customers in a Batch
41. Produce Packing Slips for Deliveries
42. Print Page Numbers on All Packing Slips Per Customer
43. Print Correct Delivery Dates on All Packing Slips Per Customer
44. Allow Database Queries and Reporting Based on Individual Distributor Areas
45. Allow Editing / Reversing of Data Entered Into Database or The Order Queue
46. Allow Designating Brochure Ownership and Owner Contact Information
47. Allow Distributors to Edit Allowed Data Fields of Assigned Customers
48. Allow Re-Order Points and Bulk Re-Order Points
49. Allow Bulk Minimum and Desired Stock Levels
50. Allow Prompting for Empty Carousel Location Verification and Release
51. Provide Diagnostics for Testing Hardware Components During Setup
52. Allow Kits to be Downloaded From the Host
53. Allow Kit Batching and Picking

54. Allow The Printing of Pick Lists
55. Allow The Printing of Shortage Reports
56. Allow The Printing of Bar Code Labels By Bar Tender Software or its Equal
57. Allow The Printing of USPS Acceptable Customer Shipping Labels
58. Allow The Printing of Labels During Part Retrieval and Storage
59. Allow Cycle Count Locations; Manual Cycle Count Entry; Batch Cycle Count Processing.
60. Allow Up Load and Down Load of Data to Hand Held (PDA) Devices by Wireless Transmission, and Through Local Docking Station(s)
61. Include Standard Windows Printer Drivers
62. Include Necessary Label Printer Drivers
63. Include a Database Field for Each of the Following:
 - Rack ID – (Unique Identifier)
 - SKU #
 - Initial Quantity
 - Quantity To Date
 - Description – (Name of Timetable / Brochure)
 - Quantity On Hand
 - Case Quantity
 - Carousel Location
 - Restock Location
 - Pocket Quantity
 - Type Of Order
 - Order Quantity
 - Date To Pick
 - Route Number
 - Route Name
 - Distributor Number
 - Distributor Name
 - Customer Name
 - Address (Two Separate Rows Needed)
 - City
 - State
 - Zip
 - Contact Name
 - Contact Phone Number
 - Customer Type
 - Date On Line
 - Number Of Timetable Pockets
 - Number Of Brochure Pockets
 - Number Of Map Panels
 - Orders To Date
 - Rack Type

Region

Sub-Region (Type of Customer – Library, Senior Center, Grocery ...)

Current Season

Current Year

Next Rack ID

Comments Field (2 Rows of at Minimum 100 Spaces Each – For Notations On Customer)

Empty Fields (A Minimum of 5 Additional Fields)

Table Listing Standard Quantities Linked to a Letter Designation

(A=15, B=25, C=50, D=100, E=125, F=150, G=200, Z=Box Quantity)

B. Security

Software system access shall be made secure to maintain system integrity, reliability and to avoid loss and or contamination of data / information.

SECTION 7. PROPOSAL QUESTIONS

7.1 General

- A. This section contains the Proposal questions to be addressed by Proposers. Proposers shall address the questions in the order presented identifying the Proposal questions by number. Proposals need to be specific, detailed and straightforward using clear, concise, easily understood language.
- B. Proposers answering the Proposal questions shall examine the entire Request for Proposal document including the instructions, terms and conditions, Scope of Work and applicable standards and regulations. Failure to do so shall be at the Proposers risk.
- C. Business Entity And Financial Information
 - 1. Provide the name, address, and telephone number of legal entity with which Contract is to be written.
 - 2. Provide the name, address and telephone numbers of principal officers (President, Vice-President, Treasurer, Chairperson of the Board of Directors, and other executive officers.)
 - 3. Describe the legal status of the Proposer.
 - 4. Provide the proposer's business license numbers for states other than Washington.
 - 5. List the names, titles, and telephone numbers of persons authorized to conduct Contract negotiations with the County.
 - 6. Evidence of adequate financial stability is a prerequisite to award of a Contract regardless of any other consideration. The Proposer shall submit financial resources information according to Section 2-3 Responsiveness and Responsibility.
- D. Section 2-6, Evaluation Process, sets forth the weighted maximum scoring points system that will be used for evaluating the proposals. Along with other proposal contents indicated in Section 1-17 A, the Proposer's responses to this Section 7 are intended to provide the reviewers with the information needed to judge the worthiness of each proposal. The proposal evaluation team will assign points to each proposal section based on the guidelines of Section 2 and the information provided in this Section 7.

7.2 Contacts

Provide separate contacts for dealer representative and manufacturer where applicable

- A. Provide names, addresses, telephone numbers, and hours available for local sales and service representatives of the Proposing entity.
- B. Provide names, addresses, telephone numbers, and hours available for factory sales and service representatives for each piece of major equipment.
- C. Provide names, addresses, telephone numbers for after-hours contacts for emergency parts repair and replacement.

7.3 References

- A. Provide four (4) recent references of projects of similar size and quantity performed by the Proposer. For these recent projects, the Work must have been completed within the last five (5) years.

Provide the following information for each project:

- Owner:

- Location:
- Contact Name, phone number, e-mail address:
- Date of Installation:
- Number, type and model number of carousel
- Number of on-site personnel trained
- Project manager
- General description/quantity of products provided
- Names of any subcontractors that are also proposed to perform work under this RFP

7.4 Manufacturer, and Proposer Information

A. PROPOSER INFORMATION

1. Provide the names, addresses, telephone numbers and qualifications of any business entities to whom the supply of the following primary components of the package will be subcontracted:
 - Horizontal Carousels
 - Lift Tables
 - Light Bars
 - Inventory Management Software Applications
 - Wireless Handheld Devices
2. Provide the name and qualifications of the Proposer's Project Manager the Quality Assurance Manager, who will be assigned to this project.
3. Provide detailed experiences
4. Provide detailed experience

B. EQUIPMENT INFORMATION FOR:

- Horizontal Carousels
1. Describe preferred means for shipping and delivery of the horizontal carousel system.
 2. Provide approximate lead times for the delivery of a horizontal carousel system meeting the requirements of this RFP.
 3. List any charges associated for accelerated schedules.
 4. Describe information on available training for maintenance personnel by Factory Representatives in the field or at the factory, along with associated costs and options. Or describe any other appropriate arrangements for training, along with associated costs and options
 5. Describe extended Warranties or Maintenance agreements that are available after the Warranty period.
 6. List the equipment design life for major components.
 7. Provide information demonstrating the Proposers ability to complete repairs.

7.5 Compliance With Technical Specifications

It is important that each proposer pay careful attention to Section 6 (with Addenda updates). Section 6 outlines the basic system to be supplied by the Supply Contractor. Your Proposal should be complete

and respond to all aspects of Section 6. Any exceptions shall be explained on separate sheet attached to your Proposal, referencing the RFP section and subsection and paragraph.

A. GENERAL:

The following general information shall be included in the proposal:

1. Description and scope of supply for the equipment proposed.
2. Catalog data for all major components
3. Identify any specialty tools required

EXHIBIT NO. 1
RFP 04-005-AT
REFERENCES

PROPOSER: _____
Type or print company name

Provide at least two (2) references for which Proposer has recently provided the services similar to those required in this proposal.

1. Company Name: _____
Address: _____
Contact name and Position: _____
Phone Number: _____
E-mail address: _____
Date and description of hardware and software services provided: _____

2. Company Name: _____
Address: _____
Contact name and Position: _____
Phone Number: _____
E-mail address: _____
Date and description of hardware and software services provided: _____

3. Company Name: _____
Address: _____
Contact name and Position: _____
Phone Number: _____
E-mail address: _____
Date and description of hardware and software services provided: _____

EXHIBIT NO. 2
RFP 04-005-AT
Warehouse Floor Plan

(Measurements are approximate and are for general information purposes only)



King County

ATTACHMENT B: PROPOSAL SUBMITTAL FORM

RFP No: 04 – 005-AT

RFP Opening Date: _____ PST

Buyer: Alan Terhune

Phone: (206) 684-1067

Title: **Distribution Center Storage and Inventory Management System Project**

The Proposer hereby agrees to furnish and install the equipment and Provide the Services in accordance with the Specifications and Addenda issued under the above RFP.

Item Number	Description	Proposal Price
1	Two White WH-40 Horizontal Carousels (or Equivalent – Used preferred) Including lift table, light bars, and other related Items	\$ _____
2	Installation at Distribution Center of Carousels and related hardware items, including lift table and light bars. Hook-up to power system. Successful application of basic carousel diagnostics.	\$ _____
3	Receipt at Distribution Center of the off-the-shelf inventory management software application.	\$ _____
4	Installation of software on Distribution Center server and desktop computers. Successful testing of functional requirements for carousel operation, data elements and data storage on all carousels, and printers.	\$ _____
5	Receipt at Distribution Center of the handheld devices	\$ _____
6	Custom programming to support communication between Inventory Management Software Application and handheld Devices. Installation of Handheld device telecommunication Solutions. Successful testing meeting functional requirements of the handheld device to the Inventory Management Software Application.	\$ _____
7	Hardware –Carousel Maintenance @ 6 month intervals <i>Indicate one Six Month Period Cost:</i>	\$ _____
8	Software Maintenance / Support, Annual. <i>Indicate Annual Cost:</i>	\$ _____
9	Performance and Payment Bond Cost	\$ _____

Prompt payment discount offered: Percentage: _____ Days: _____

Standard payment is net 30 Days. Evaluation Will be at the discounted prices if the time for the discount is 20 Days.



King County

ATTACHMENT P: SOFTWARE MAINTENANCE

RFP No: 04 – 005-AT

SECTION ONE: SOFTWARE TO BE MAINTAINED

The Contractor shall maintain the Software it supplies under the Contract, including any updates or Enhancements to such Software, according to the terms of this Attachment and the Contract.

SECTION TWO: COUNTY RESPONSIBILITIES

- 2.1 The County shall promptly notify the Contractor following the discovery of any error, defect or nonconformity in the Software and shall provide reasonable details of the error, defect or nonconformity.
- 2.2 The County, upon discovery of any error, defect or nonconformity in the Software, shall, if requested to do so by the Contractor, submit to the Contractor a listing of output and any such other data which Contractor reasonably may request in order to reproduce operating conditions similar to those present when the error occurred or the defect or nonconformity was discovered.
- 2.3 The County shall provide the Contractor with access to facilities for the purpose of Software maintenance, if necessary.

SECTION THREE: SERVICE RESPONSIBILITIES OF CONTRACTOR

- 3.1 The Contractor shall provide the resources necessary to maintain the Software such that it will be free from defects in design, workmanship and materials and shall conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the Contract and any applicable software licenses.
- 3.2 A detected software error, fault or nonconformity shall be assigned a priority by the Contractor as follows:
 - a. **Priority 1:** Error, fault or nonconformity that renders the Distribution Center Storage and Inventory Management System fully or partially inoperable or exposes the Software to hacking or other security breaches.
 - b. **Priority 2:** Error, fault, or nonconformity that requires an update to the Software, but does not affect the ability of the Distribution Center Storage and Inventory Management System to operate substantially correctly.
 - c. **Priority 3:** Error, fault, or nonconformity that does not affect the ability of the Distribution Center Storage and Inventory Management System to operate.
 - d. **Priority 4:** Routine maintenance, bug fixes and software changes/updates.
- 3.3 The Project Manager shall reserve the right to reassign the Priority of an error, fault or nonconformity.
- 3.4 The Contractor shall correct detected software errors, faults or nonconformities, and shall implement such corrections in all impacted equipment and/or systems.
- 3.5 Upon receiving a notification of an error, fault or nonconformity, the Contractor shall notify the Project Manager and provide a report that includes:
 - a. A narrative description of the (i) nature of the error, fault or nonconformity, (ii) priority level assignment, (iv) identification of equipment and/or systems impacted, and (iv) the nature of such impacts.
 - b. A corrective action plan for repair of the error, fault, or nonconformity, including a timeline for implementation of the repair.

- c. A description of “workarounds” or alternative strategies for maintaining system operation during the repair period.
- 3.6 Notification by the Contractor of an error, fault or nonconformity and provision of the report per subsection 3.5 shall be provided:
 - a. Within two (2) hours of notification of a Priority 1 error, fault or nonconformity.
 - b. Within twenty-four (24) hours of a Priority 2, 3 or 4 error, fault, or nonconformity.
- 3.7 Correction of errors, faults or nonconformities shall be completed by the Contractor within the following timeframes:
 - a. Priority 1: Within eight (8) hours of notification.
 - b. Priority 2: Within seventy-two (72) hours of notification.
 - c. Priority 3 and Priority 4: The Contractor may provide such correction in the next release of Software, provided that such release occurs no later than sixty (60) days from the earliest notification for any correction included in the update.
- 3.8 The Contractor shall follow the proper security procedures for gaining access, if necessary, to County facilities and the equipment located thereon in order to satisfy its maintenance obligations.
- 3.9 The Contractor shall ensure that all work performed or furnished under this Attachment shall be performed in a good, workmanlike, and professional manner, by qualified personnel and in accordance with industry standards.
- 3.10 The Contractor shall provide documentation of all Software maintenance performed by the Contractor throughout the term of the Contract including, but not limited to, bug fixes, updates, and Enhancements.
- 3.11 The Contractor shall ensure that its performance of Software maintenance obligations shall not degrade the Distribution Center Storage and Inventory Management System or require the County to purchase new or additional hardware or Software for continued operation of the Distribution Center Storage and Inventory Management System.
- 3.12 The Contractor shall ensure that its performance of Software Maintenance shall not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information or non-disclosure rights of any third party.

SECTION FOUR: SOFTWARE UPDATES AND UPGRADES

- 4.1 The Contractor shall provide periodic Software updates that shall incorporate, at no cost to the County, (i) corrections of any defects, and (ii) at the sole discretion of the Contractor, other changes to the Software.
- 4.2 The Contractor shall notify the Project Manager of its intention to provide a Software update or Enhancement within ninety (90) days of its provision of the update or Enhancement.
- 4.3 The Contractor shall be responsible for the installation of any software updates and Enhancements. All software updates and Enhancements shall be provided with:
 - a. Release notes describing the nature of the correction, summary revisions to operations, maintenance or other procedures, and summary changes to systems, subsystems or components.
 - b. Revised operations, maintenance and other manuals and/or technical documentation, or portions thereof, amending County manuals and technical documentation as required to reflect changes resulting from implementation of the correction. Three (3) paper copies and one (1) electronic copy, in CD ROM format, in both Adobe Acrobat and native source format, shall be provided.
 - c. Version control information for corrected software and all revised documents, whether revised in whole or in part.
 - d. Test plan for testing update or Enhancement functionality.
- 4.4 The Contractor shall ensure that the Software and all updates and Enhancements thereto are and shall remain throughout the entire term of the Contract compatible and interoperable with the Distribution Center Storage and Inventory Management System and all of the software and equipment thereof, including all updates or Enhancements to such software and equipment.

- 4.5 Upon testing and acceptance by the County, a software update or Enhancement shall be maintained by the Contractor according to the terms of the Contract and this Attachment.

SECTION FIVE: PAYMENT

- 5.1 In accordance with Section 4.16.A of the Contract, the Contractor shall perform its Software maintenance obligations herein at no cost to the County during the Warranty Period.
- 5.2 Following expiration of the Warranty Period, the County shall pay the Contractor the annual fee set forth in Attachment B for Software maintenance work performed according to the terms herein. The parties agree that the amount paid by the County represents a fixed annual fee that will be paid regardless of actual work performed. The Contractor shall invoice the County semi-annually, and the County will pay the Contractor within 30 days of receipt of invoice.

SECTION SIX: LEGAL RELATIONS

- 6.1 In the event the Contractor fails to comply with its obligations herein, the County shall, upon written notice to the Contractor, have the authority to deduct the County's cost for the Contractor's non-compliance from any compensation due or to become due to the Contractor.
- 6.2 The Contractor's satisfaction of its maintenance obligations herein shall not constitute a waiver by the County of the Contractor's breach of its obligations under the Contract.
- 6.3 All remedies available to the County for the Contractor's breach are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

SECTION SEVEN: IDENTIFICATION OF COUNTY AND CONTRACTOR CONTACTS

- 7.1 The County contact information for purposes of software maintenance is as follows:
King County Metro Transit
ATTN: David McLean
201 South Jackson Street (MS-KSC-TR-0331)
Seattle, WA 98104-3856
(206) 684-1971
- 7.2 The Contractor's contact information for purposes of software maintenance is as follows:
- 7.3 Any changes in contact information from that noted above must be communicated in writing to the other party.



King County

ATTACHMENT Q: ESCROW AGREEMENT

ESCROW AGREEMENT dated as of this ____ day of _____, 20____, by and among _____, organized and existing under the laws of the State of _____, and having its principal place of business at _____ (hereinafter "Licensor"); King County, organized and existing under the laws of the State of Washington and having its principal place of business at _____Seattle, WA (hereinafter the "County"); and _____, organized and existing under the laws of the State of _____ and having its principal place of business at _____ (hereinafter the "Escrow Agent").

WITNESSETH:

WHEREAS, the Licensor and the County have entered into Contract No.257775 (hereinafter "Contract ") dated _____, a copy of which is appended hereto and made a part hereof, pursuant to which the Licensor has licensed to the County certain computer software, including all updates, improvements, and enhancements thereof from time to time developed by the Licensor, and such additional program changes as the County may order from the Licensor from time to time, and all documentation therefor developed by the Licensor (hereinafter collectively referred to as the "Product"); and

WHEREAS, it is the policy of the Licensor not to disclose certain source codes and related documentation (hereinafter collectively referred to as the "Source Code") for the Product to its customers except as provided in the Contract and herein; and

WHEREAS, Licensor and the County agree that upon the occurrence of certain events described in Section 4(a) below, the County shall be able to obtain the fully licensed Source Code and all revisions thereof, and accordingly, the Licensor agrees to deliver said Source Code to the Escrow Agent;

NOW, THEREFORE, in consideration of the mutual covenants exchanged herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Licensor, the County, and the Escrow Agent hereby act and agree as follows:

1. Deposits

The Escrow Agent, as a safekeeping escrow agent, agrees to accept from the Licensor the Source Code. The Escrow Agent will issue to the Licensor a receipt for the Source Code upon delivery. The Source Code held by the Escrow Agent shall remain the exclusive property of the Licensor, and the Escrow Agent shall not use the Source Code or disclose the same to any third party except as specified herein. The Escrow Agent will hold the Source Code in safekeeping at its offices hereinabove indicated unless and until the Escrow Agent receives notice pursuant to the terms of this Agreement that the Escrow Agent is to deliver the Source Code to the County or Licensor, in which case the Escrow Agent shall deliver the Source Code to either Licensor or the County pursuant to the provisions of this Escrow Agreement.

2. Representations of Licensor to the County

Licensor represents and warrants to the County that:

(a) The material described in the attached Schedule A constitutes the Source Code and documentation for the Product licensed to the County pursuant to the Contract.

(b) The Source Code delivered to the Escrow Agent is in a form suitable for reproduction by computer and/or photocopy equipment, and consists of a full source language statement of the program or programs comprising the Product and complete program maintenance documentation, including all flow charts, schematics, annotations and database design which comprise the precoding detailed design specifications, and all other material necessary to allow a reasonably skilled third party programmer or analyst to maintain or enhance the Product without the help of any other person or reference to any other material.

(c) The Licensor will promptly supplement the Source Code with all revisions, corrections, enhancements, or other changes so that the Source Code constitutes a human-readable program for the then current release of the Product.

3. Testing

Escrow Agent shall test all improvements, enhancements, versions, updates, revisions, custom programming, and such additional program changes as County may order from Escrow Agent from time to time, deposited into escrow. The improvements, enhancements, versions, updates, revisions, custom programming, and such additional program changes tested shall be those currently used by County. In addition, Escrow Agent agrees to provide County with substantial evidence that the Source Code shall perform at least at the following minimum levels:

- Application(s) will compile without Errors and run
- Inventory management functions can be performed
- Distributions functions can be performed
- Reporting functions can be performed

4. Notice of Default

(a) The Licensor shall be deemed to be in default of its responsibilities to County if:

(i) the Licensor is not able, at any time during the performance of the Contract, to continue the contract for any reason, including, but not limited to, termination for non-performance; default in performance; or sale, assignment, or transfer of ownership of the Contract without the written authorization of the County; or

(ii) the Licensor is unable, at any time during the warranty period specified in the Contract, to correct any malfunction, defect, or nonconformity in any Product which prevents such Product from functioning in accordance with the applicable specifications, documentation, performance criteria, and other warranties and descriptions provided in the Contract, within _____ business days after the County's notification to Licensor specifying, in reasonable detail, how the Product fails to conform; or

(iii) the Licensor is unable to discharge any of its maintenance obligations with respect to any Product in accordance with the warranties or other standards for such maintenance set forth in any software maintenance agreement from time to time in effect between the Licensor and the County, within _____ business days after County's notification specifying in reasonable detail how the Product is not being maintained properly; or

(iv) the sale, assignment, or other transfer by the Licensor, without the prior written consent of the County, of such of the Licensor's rights in the Product as would prevent the Licensor from the discharge of its obligations with respect to the performance of the Product under the Contract during the warranty period, or from the discharge of its maintenance obligations with respect to the Product under any software maintenance agreement from time to time in effect between Licensor and County; or

(v) the Licensor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers, or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise, and County has compelling reasons to believe that such event(s) will cause Licensor to fail to meet its requirements under the Contract, or warranty and maintenance obligations in the foreseeable future.

(b) The County shall give written notice (the "Notice of Default") to the Escrow Agent of any default by the Licensor. The Notice of Default shall, at the minimum, (i) be labeled "Notice of Default," (ii) identify the Contract and this Escrow Agreement, (iii) specify the nature of the default, (iv) identify the Source Code with specificity, and (v) demand the delivery of the fully licensed Source Code to the County.

(c) Upon receipt of the Notice of Default, the Escrow Agent shall send a copy of the Notice of Default to the Licensor by certified or registered mail, postage prepaid, return receipt requested. If the Licensor desires to dispute the Notice of Default, the Licensor shall, within _____ days after the receipt of the copy of the Notice of Default from the Escrow Agent, deliver to the Escrow Agent with a copy to the County an Affidavit stating that no default has occurred, whereupon the provisions of Paragraph 6 hereof will become applicable. If the Escrow Agent receives the Affidavit within said _____ days, the Escrow Agent shall continue to hold the Source Code in accordance with this Escrow Agreement. If the Escrow Agent does not receive the Affidavit within said _____ days, the Escrow Agent is authorized and directed to deliver the fully licensed Source Code to the County.

5. Notice of Termination

(a) Upon the termination of the Contract for reasons other than non-performance or default, failure to perform the warranty provisions or other events as more completely described in paragraph 2 herein, the Licensor may obtain the return of the Source Code by furnishing written notice of the termination, agreed to by authorized and notarized signature of the County.

(b) Bankruptcy of Licensor. Licensor and County acknowledge that this Agreement is an "agreement supplementary to" the Contract as provided in Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"). Licensor acknowledges that if Licensor, as a debtor in possession or a trustee in Bankruptcy in a case under the Bankruptcy Code, rejects the Contract or this Agreement, County may elect to retain its rights under the Contract and this Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of County to Licensor or the Bankruptcy Trustee, Licensor or such Bankruptcy Trustee shall not interfere with the rights of County as provided

in the Contract and this Agreement, including the right to obtain the Source Code from the Escrow Agent at no further cost, expense or payment obligation to the County.

6. Disputes

(a) In the event that Licensor files the required affidavit with the Escrow Agent in the manner and within the time period set forth in Paragraph 4(c) hereof, or if the County shall fail to agree that the License has been terminated, the Escrow Agent shall not release the Source Code to either party except in accordance with (i) a mediation agreement as hereinafter provided; (ii) receipt of an agreement with authorized and notarized signatures of both Licensor and County, authorizing the release of the Source Code to one of the parties; or (iii) a final decision by the King County Superior Court.

(b) Disputes arising under this Agreement shall be referred immediately to mediation. The mediation shall be conducted in Seattle, Washington. The Escrow Agent shall give prompt effect to any authenticated mediation agreement, notwithstanding the right of either party to seek, in King County Superior Court, enforcement or a stay of the mediation agreement based solely upon the failure of either party to comply with the mediation agreement.

(c) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.

7. Payment to Escrow Agent

As payment for its services hereunder, the Escrow Agent shall receive a fee in an amount agreed to by both parties or, if there is no agreement, in an amount specified by the arbitrator, to be paid by the Licensor.

8. Termination

This Escrow Agreement shall terminate on the delivery of the Source Code to either party in accordance with the terms of this Agreement.

9. Waiver, Amendment, or Modification; Severability

This Escrow Agreement shall not be waived, amended, or modified except by written agreement of all the parties hereto. Any invalidity in whole or in part, of any provision of this Escrow Agreement shall not affect the validity of any other of its provisions.

10. Notices

All notices required to be given hereunder shall be in writing and shall be given by certified or registered mail, return receipt requested, to the parties at their respective addresses as provided in the Contract.

11. Limitation on Escrow Agent's Responsibility and Liability

(a) The Escrow Agent shall not be obligated or required to examine or inspect the Source Code, or any of the Additions. The Escrow Agent's obligation for safekeeping shall be limited to providing the same degree of care for the Source Code as it maintains for its valuable documents and

those of its customers lodged in the same location with appropriate atmospheric or other safeguards. However, the parties agree and acknowledge that the Escrow Agent shall not be responsible for any loss or damage to any of the Source Code due to changes in such atmospheric conditions, unless such changes are proximately caused by the gross negligence or intentional misconduct of the Escrow Agent, its employees, agents, or assigns.

(b) The Escrow Agent shall be protected when acting upon any written notice, request, waiver, consent, receipt, or other paper or document furnished to it, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be.

(c) In no event shall the Escrow Agent be liable for any act or failure to act under the provisions of this Escrow Agreement except where its acts are the result of its gross negligence or intentional misconduct. The Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless in writing received by it, and, if its duties are affected, unless it shall have given its prior written consent thereto.

(d) The parties to this Agreement hereby jointly and severally indemnify the Escrow Agent against any loss, liability, or damage, other than any caused by the gross negligence or intentional misconduct of the Escrow Agent, its employees, agents and assigns, including reasonable costs of litigation and counsel fees, arising from and in connection with the performance of its duties under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the year and date first above written.

("Licensor")

King County

("Escrow Agent")

[intellec\escrow5.doc.rev.3/00]

SCHEDULE A


Escrow fee: _____

to be paid by: _____

Description of Materials Containing the Source Code and related Documentation:

PROPOSAL LABEL

Complete the form below (or reasonable facsimile) and affix to the exterior lower left hand corner of the submission envelope(s), box(es), etc.

U R G E N T – SEALED PROPOSAL ENCLOSED Do Not Delay – Deliver Immediately	
U R G E N T	<div> King County</div> <div>King County Procurement & Contract Services Section Exchange Building, 8th Floor 821 2nd Ave., EXC-FI-0862 Seattle, WA 98104-1598</div>
	Proposal Number: <input type="text"/>
	Proposal Title: <input type="text"/>
	Opening Date: <input type="text"/>
	Firm Name: <input type="text"/>
U R G E N T	